SUPREME COURT OF THE UNITED STATES.

No. 147.

SAMUEL S. DOWNEY, PLAINTIFF IN ERROR,

vs.

MARY M. HICKS, EXECUTRIX OF JOSEPH T. HICKS DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE U. S., FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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Gideon, Print.

452.

SAMUEL S. DOWNEY
vs.
MARY M. HICKS, executrix, &c., of Joseph T. Hicks, dec'd.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States, held at the town of Jackson, in and for the ninth circuit and southern district of Mississippi, at the May term, in the year of our Lord one thousand eight hundred and fifty.

Be it remembered, that heretofore, to wit, on the 3d day of August, A. D. 1843, the following writ of summons ad respondendum issued out of the clerk's office of the court aforesaid, in the words and figures, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you, without delay, to summon Benjamin J. Hicks, executor, and Mary M. Hicks, executrix, of the last will and testament of Joseph T. Hicks, deceased, who are citizens of the State of Mississippi, that they be and appear at the circuit court of the United States, to be held at the city of Jackson, in and for the southern district of Mississippi, on the first Monday of November next, to answer to Samuel S. Downey, a citizen of the State of North Carolina, of a plea of trespass on the case to his damage thirty thousand dollars, and that they do file their plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against them by default; and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 3d day of August, A. D.
[L. S.] 1843, and in the 68th year of the independence of the United States of America.

WM. H. BROWN, *Clerk*.

(Marshal's return.) Executed by leaving copies at the residence of B. J. Hicks, 21st August, 1843.

AND. MILLER, *Marshal*,
By N. G. WATTS, *Dep*.

And on the same day of suing out the writ aforesaid, the said plain-

tiff, by Mason and Burwell, his attorneys, filed his declaration herein, against the said defendants, in the words and figures, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Circuit court, November term, 1843.

Samuel S. Downey, a citizen of the State of North Carolina, by his attorneys, complains of Benjamin J. Hicks, executor, and Mary M. Hicks, executrix, of the last will and testament of Joseph T. Hicks, deceased, who are citizens of the State of Mississippi, residing in the southern district thereof, who were summoned, &c., of a plea of trespass on the case, upon promises.

1st count. For that, whereas, the said Joseph T. Hicks, in his lifetime, to wit, on the 1st day of March, A. D. 1840, at Natchez, Mississippi, to wit, in the district aforesaid, made his certain promissory note, in writing, of that date, (by the name and signature of Hicks & Arnold,) and thereby, then and there, promised to pay to said plaintiff, by the name of "S. S. Downey," the sum of four hundred and fifty-six dollars, for value received, in hire of negroes, and then and there delivered the said note to the said plaintiff; by reason whereof the said Joseph, in his lifetime, became liable to pay to said plaintiff the said sum of money in said note specified according to its tenor and effect; and being so liable, then and there undertook and promised the said plaintiff to pay him the said sum of money on request.

2d count. And whereas, also, afterwards, to wit, the 1st day of March, A. D. 1849, at, to wit, the district aforesaid, the said Joseph T. Hicks, in his lifetime, was indebted to the said plaintiff in the further sum of fifteen thousand dollars for the hire of a large number of negro slaves of said plaintiff, to wit, of forty negro slaves for a long period of time, to wit, for the period of five years before that time had, used, and employed by the said Joseph in his lifetime, in and about the work and business of him, the said Joseph, and for the said Joseph, and at his special instance and request; and being so indebted he, the said Joseph in his lifetime, then and there in consideration thereof, undertook and promised the said plaintiff to pay him the said last mentioned sum of money on request.

3d count. And whereas, also, afterwards, to wit, on the day and year last aforesaid, at, to wit, the district aforesaid, the said Joseph in his lifetime was indebted to the said plaintiff in a large sum of money, to wit, the sum of other fifteen thousand dollars, upon an account then and there stated between the said Joseph and the said plaintiff; and in consideration of said indebtedness the said Joseph, in his lifetime, undertook and promised, then and there, to pay said plaintiff the sum of fifteen thousand dollars so due and in arrear as aforesaid on request.

4th count. And whereas, also, the said Joseph afterwards, to wit, on the day and year aforesaid, at, to wit, the district aforesaid, in consideration that the said plaintiff would hire to him, the said Joseph, a large

number of slaves, to wit, forty, for a long period of time, to wit, for the period of five years, in consideration thereof, undertook and promised the said plaintiff to pay him therefor so much money as the hire of said slaves for the said time was reasonably worth; and the said plaintiff avers that the hire of said slaves was reasonably worth other fifteen thousand dollars, of which said Joseph in his lifetime then and there had notice.

5th. And whereas, also, the said Joseph T. Hicks in his lifetime, afterwards, to wit, on the day and year aforesaid, in the district aforesaid, was indebted to the said plaintiff in the further sum (6th) of fifteen thousand dollars and cents, for the work, labor, care, and diligence of the said plaintiff and his servants by him before that time done, performed, and bestowed, in and about the business of the said Joseph, and for the said Joseph, (7th) and at his like special instance and request; and also in the further sum of fifteen thousand dollars cents, for divers goods, wares, and merchandise, by the said plaintiff before that time sold and delivered to the said Joseph, and at his like special instance and request; and also, in the further sum of fifteen thousand dollars cents, for money by the said plaintiff before that time, lent and advanced to, and paid, laid out and expended for, the use of the said Joseph, and at his like special instance and request.

8th. And also in the further sum of fifteen thousand dollars cents, for other money by the said Joseph before that time had and received to and for the use of the said plaintiff. And, being so indebted, he, the said Joseph, in his lifetime, in consideration thereof, afterwards, to wit, on the day and year aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay him the said last mentioned sums of money when he, the said Joseph, should be thereunto afterwards requested.

9th. And whereas, also, the said Joseph in his lifetime, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, accounted with the said plaintiff of and concerning divers other sums of money from the said Joseph to the said plaintiff before that time due and owing, and then in arrear and unpaid; and upon such accounting the said Joseph, in his lifetime, was then and there found to be in arrear and indebted to the said plaintiff in the further sum of fifteen thousand dollars cents; and being so found in arrear and indebted he, the said Joseph, in his lifetime, in consideration thereof, undertook, and then and there faithfully promised, to pay the said plaintiff the said last mentioned sum of money when he, the said Joseph, should be thereunto afterwards requested.

10th count. And whereas, also, heretofore, to wit, on the 8th day of November, 1836, at, to wit, the district aforesaid, the said Joseph, in his lifetime, had agreed with the said plaintiff to hire of him, the said plaintiff, certain slaves of said plaintiff, named as follows, to wit, Lovelace, Peter, Anderson, Billy, Ben, Isham, Washington, Stuphon, Reuben, Lewis, Eddy, Winston, Zed, Fanny, Mary, Tabby, Becky, Sophia, Tamar, Peggy, Dowsey, Anna, Jonah, Jack, and Beckey's

child; and in consideration of the said plaintiff then and there hiring to said Joseph the said slaves, the said Joseph then and there agreed to pay said plaintiff therefor at the same rates which one Willman and Mills had agreed to pay the said plaintiff for the said slaves. And the plaintiff avers that the said Willman and Mills had agreed to and with him for the hire of said slaves, in substance as follows, viz: "Know all men by these presents, that we, Willman and Mills, are held and firmly bound unto Samuel S. Downey in the sum of thirty-six hundred and ten dollars, $3,610; for which payment, well and truly to be made, we bind ourselves, our heirs and assigns, firmly, by these presents. Sealed with our seals, and dated this 6th day of May, A. D. 1836. The condition of the above obligation is such, that whereas the above bound Willman and Mills has hired the following hands to work on a railroad near Natchez, (viz:) Lovelace, Peter, Anderson, Billy, Ben, Isham, Washington, Spuphon, Reuben, Lewis, Eddy, Winston, Zed, Fanny, Mary, Tabby, Becky, Sophia, Tamar, Peggy, Dowsey, Anna, Jonah, Jack, and Becky's child, until the 10th day of October next, for the sum of eighteen hundred and five dollars, to be paid in instalments in the following way, (viz.,) seven hundred and twenty-two dollars on the 10th day of July next; seven hundred and twenty-two dollars on the 10th day of September next, and three hundred and sixy-one on the 10th day of October next and if each instalment is not punctually paid they will carry 8 per cent. interest until paid; and the above bounds as aforesaid oblige themselves to feed said hands with a plenty of good and wholesome food, put them in good and comfortable houses to sleep and stay in when not at work, attend to them when sick, employ physicians when necessary and pay their bills, take care of and treat them humanely, and not work them on the Sabbath day, allow them some reasonable time to wash and mend their clothes; and if said hands lose any time by sickness or otherwise, no discount or deduction is to be made, nor for the expenses of physicians' bills, then the above obligation to be void and of no effect, otherwise to remain in full force and virtue. Signed Willman and Mills. Witness, J. T. Hicks."

Of which said Joseph then and there had notice.

And the plaintiff in fact saith, that, under the said contract and agreement for hire aforesaid, the said Joseph had used and employed the slaves aforesaid of the said plaintiff from the said 8th day of November, 1836, until the 1st day of January, A. D. 1839, at, to wit, the district aforesaid, and undertook and promised the said plaintiff to pay him therefor the sum of money at the time in said contract of hire specified, to wit, one instalment of seven hundred and twenty-two dollars on the 8th day of January, 1837, and so on, at the expiration of every two months, till the said 1st day of January, 1839, with interest thereon from the times at which said instalments became due and payable. And the plaintiff avers that the said Joseph did not punctually pay the said sum of money in this count mentioned, or any one of them.

Yet the said Joseph in his lifetime, and the said defendants since

the death of said Joseph, not regarding the said several promises and undertakings of the said Joseph, have not as yet paid to said plaintiff the said several sums of money, or either of them, or any part thereof, (although often requested so to do,) but to pay the same in his lifetime the said Joseph wholly neglected and refused, and the said defendants, since his death, hitherto have and still do refuse, to the damage of the plaintiffs of thirty thousand dollars; and therefore he brings his suit, &c.

MASON & BURWELL,
Attorneys for plaintiff.

And afterwards, to wit, on the 5th day of February, A. D. 1844, the following writ of alias summons ad respondendum issued out of the clerk's office of the court aforesaid, in the words and figures, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you, as before, &c., without delay, to summon Benjamin J. Hicks, executor, and Mary M. Hicks, executrix, of the last will and testament of Joseph T. Hicks, deceased, who are citizens of the State of Mississippi, that they be and appear at the circuit court of the United States, to be held at the city of Jackson, in and for the southern district of Mississippi, on the first Monday of May next, to answer to Samuel S. Downey, a citizen of the State of North Carolina, of a plea of trespass on the case to his damage thirty thousand dollars, and that they do file their plea or defence with the clerk of said court on or before the meeting of the same, or judgment will be given against them by default; and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 5th day of February, A. D.
[L. S.] 1844, and in the 68th year of the independence of the United States of America.

W. H. BROWN, *Clerk*,
Per C. H. ROGERS, *Dep'y clerk*.

(Marshal's return:) Executed 16th April, 1844.
AND. MILLER, *Marshal*,
By N. G. WATTS, *Deputy*.

1st plea. And the said defendants by their attorney come and defend the wrong and injury when, &c., where, &c., and for plea say, his action aforesaid ought not to have and maintain against them, because they say that the said Joseph T. Hicks in his lifetime did not undertake, promise, and assume in manner and form as the plaintiff in

declaring against said defendants has alleged; and of this they put themselves upon the country, &c.

J. S. YERGER,
Attorney for defendants.

And plaintiff doth the like.

MASON & BURWELL, *P. Q.*

2d plea. And the said defendants for further plea in this behalf say, actio non, because they say that the said Joseph T. Hicks, deceased, did not, within six years next before the institution of this suit, undertake, promise, and assume in manner and form as the plaintiff in declaring against said defendants has alleged; and of this they are ready to verify; wherefore they pray judgment, &c.

J. S. YERGER,
Attorney for defendants.

Replications and issue in short by consent.

MASON & BURWELL.

3d plea. And the said defendants for further plea in this behalf say, actio non, because they say that the said Joseph T. Hicks, in his lifetime, did pay and discharge the said several sums of money in the said plaintiff's declaration demanded, to the said plaintiff, to wit, on the 1st day of January, 1840, at the district aforesaid; and this they are ready to verify; wherefore they pray judgment, &c.

J. S. YERGER,
Defendants' attorney.

Replication and issue in short by consent.

MASON & BURWELL, *P. Q.*

And afterwards, to wit, at the May term, 1845, of the said circuit court, to wit, on the twelfth day of May, in the year of our Lord one thousand eight hundred and forty-five, the following order was made by said court:

Cause continued and leave given to defendants to cross examine plaintiff's witnesses, E. Montgomery, Aylette Buckner, John R. Hicks, and —— Mills, whose depositions are on file and to read.

BURWELL, *for plaintiff,*
YERGER, *for defendants.*

And afterwards, to wit, at the November term, 1845, of the said circuit court, to wit, on the seventh day of November, in the year of our Lord one thousand eight hundred and forty-five, the following order was made by said court:

Continued for defendant on affidavit filed at cost of term, with leave to take depositions of Aylette Buckner and Eli Montgomery, on giving ten days' notice to opposite party.

And afterwards, to wit, at the May term, 1848, of the said circuit court, to wit, on the 3d day of May, in the year of our Lord one thou-

sand eight hundred and forty-eight, the following order was made by the court:

Motion by defendants, by attorney, to abate this suit as to Benjamin J. Hicks, ex'or, &c., as aforesaid, he having resigned as executor, &c., ordered by the court that the motion be overruled.

And afterwards, to wit, at the November term, 1848, of the said circuit court, to wit, on the eighth day of November, in the year of our Lord one thousand eight hundred and forty-eight, it having been suggested to the court that since the institution of this suit the said defendant, B. J. Hicks, has departed this life, it is ordered that this suit do abate as to him.

And afterwards, to wit, at the said May term of the court aforesaid, to wit, on the sixteenth day of November, in the year of our Lord one thousand eight hundred and fifty, until which time this cause was legally continued, came the parties aforesaid, by their respective attorneys; and a jury being called, came, to wit: W. D. Burnett, J. E. Wheeler, Jacob Orner, W. H. Whight, Tho's Berry, Ch's Hachstadder, Wm. Steuart, E. B. Hooper, D. H. Alexander, J. M. Pintard, Ch's H. Foreman, and H. M. Coffey, who, being empannelled, tried, and sworn to speak the truth concerning the matters within contained, do say, upon their oaths, that they find for the defendant upon the issues joined, as to the within note of four hundred and fifty-six dollars, and the within account.

Bill of exceptions tendered by plaintiff.

SAMUEL S. DOWNEY }
vs.
J. T. HICKS' exec'x. }

Be it remembered, that on the trial of this cause, before the hon. Sam'l J. Gholson, judge, and a jury, the defendants offered to read the deposition of Andrew Arnold, as follows, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, to wit:

The President of the United States, to A. L. Robinson, esq., an acting justice of the peace in and for Armstrong county, Penn'a, at Kittanning, greeting:

Know ye, that, trusting to your fidelity and provident circumspection in diligently examining Andrew Arnold in a certain cause now pending in the circuit court of the United States, for the district aforesaid, wherein Samuel S. Downey is plaintiff, and Mary M. Hicks, executrix of Joseph T. Hicks, deceased, defendant, you are requested, at such certain days and places as you shall appoint, to call and cause the said witness to come before you, and him diligently examine on oath, and his examination into the circuit court aforesaid you distinctly and plainly set, together with this writ enclosed, with all convenient speed.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of November, in the year of our Lord one thousand eight hundred and forty-nine, and in the 73d year of the independence of the United States of America.

[L. S.]

Issued on the 14th day of March, 1849.

W. H. BROWN, *Cl'k*,
Per CH'S ROGERS, *D. C.*

The execution of this commission appears in a certain schedule hereto annexed.

A. L. ROBINSON.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Questions to be asked of Mr. Andrew Arnold, a citizen of the State of Pennsylvania, whose answers thereto are to be read in a suit pending in the circuit court of the United States, for the southern district of Mississippi, wherein Samuel S. Downey is plaintiff, and Mary M. Hicks, executrix of Joseph T. Hicks, is defendant, on the part of defendant.

1st. Were you present at any time between 6th and 10th of January, 1839, at a settlement which took place between Dr. John R. Hicks, acting as agent of Samuel S. Downey, and Joseph T. Hicks? If you were, state all you know in regard to their settlement; state particularly what debts were settled, and how said debts originated.

2d. If any check or checks were paid to said John R. Hicks as agent for said Downey, please state, if you can, the amount of the same; the bank they were on; who drew them; and whether the said bank was then paying specie; and if paying specie, how long it continued to pay specie after said settlement.

3d. State whether you ever had any conversation with Samuel S. Downey in regard to that settlement; and state when that conversation took place, and what said Downey said then in regard to said settlement.

4th. State whether, in that conversation, or in any other, said Downey said anything about John R. Hicks being his agent to collect and receive from Joseph T. Hicks the money he owed him; state what he said on that subject.

5th. State what said Downey has said to you about said Hicks's settlement with Joseph T. Hicks, and state whether he said anything about having confirmed that settlement.

6th. Do you know of any indebtedness, other than that embraced in the above settlement, or do you know of any other debt due from Hicks & Arnold to said Downey; if so, please state it.

7th. If any indebtedness existed, other than that settled as above, state what you know of the transfer by said Hicks & Arnold of all

their interest in debts due them from the Mississippi Railroad Company to secure said indebtedness, and when said assignment was made.

8th. Was the transfer alluded to in the last question made to secure the debt which was settled by John R. Hicks?

9th. After the assignment or transfer mentioned in the 7th interrogatory, was there any agreement by which Hicks & Arnold agreed to pay the debt to secure which said assigment was made, if the Mississippi railroad did not pay them?

10th. If there was such agreement, who was present, and when and where was it made?

11th. Was any such agreement made as you know of in regard to the check or payment made by Jos. T. Hicks to John R. Hicks, agent, &c., upon the settlement in January, 1839?

12th. Were Messrs. Buckner & Stewart present when the assignment mentioned in the 7th interrogatory was made, or were they present when the agreement mentioned in the 9th interrogatory was made?

13th. Was any such promise or agreement as this mentioned in the 9th interrogatory made in their presence in regard to the check paid to John R. Hicks, in January, 1839?

14th. If you know of any thing else, please state it.

15th. State whether you have not been sued on the claim in Pennsylvania by S. S. Downey, and whether the case was decided on its merits for or against you.

16th. Are you interested in this case? If you have any release from the executrix of Joseph T. Hicks, please mark it and enclose it.

17th. Examine the release signed by yourself and herewith exhibited, and state whether you executed it, and in your answer mark it so that it may be identified.

Cross questions for Andrew Arnold.

1. When John R. Hicks came to Mississippi in 1839, did he not bring a letter from Mr. Downey to Joseph T. Hicks, and show that letter before any business was transacted between them in which Mr. Downey was interested?

2. How was the account between Downey and Hicks made up; did not Joseph T. Hicks furnish the items, about which John R. Hicks knew nothing, but which he took from what Joseph T. Hicks said merely; and did he, (John R. Hicks,) not expressly leave the amount to be finally adjusted between Messrs. Downey and Hicks upon some future occasion?

3. In making the settlement, (if you say there was a settlement,) did John R. Hicks have the contract for negro hire, or a copy or memorandum thereof; did you know at that time that there was a special contract between Downey and Joseph T. Hicks, and the contents of said contract?

4. Was it expected, believed, or intended, that the check, if you

say one was given to John R. Hicks, should or should not be paid on presentment at the bank; had Joseph T. Hicks, or Hicks & Arnold, that amount of cash in the bank; if so, when deposited, and by whom and what means; was there not some expectation, understanding, or arrangement, that the check would or was to be arranged by the certificate of deposit, payable at a future day; did not Joseph T. Hicks go with John R. Hicks to Natchez to carry out that arrangement; if he did not go with that view, with what view did he accompany his brother; did you ever know of the bank paying as much specie at one time as $17,000, and what was the largest sum you ever knew the railroad bank at Natchez to pay at one time, and when; how much did you know of the railroad bank paying from 10th January, 1839, at any one time, and in all put together?

5. Did not the railroad bank owe Hicks and Arnold, and was not the check and certificate of deposit merely a transfer or mode of transferring so much of said debt to said Downey on account of the debt due by said Joseph T. Hicks to Downey?

6. Were you present at all conversations between Joseph T. Hicks and John R. Hicks, from the time John R. Hicks arrived until he and his brother left to go to Natchez together; did not you or Joseph T. Hicks, know, believe, or suspect, that a check for so large an amount would not be paid; and was it not drawn, if drawn at all, under such belief, knowledge, or suspicion; and with the belief, knowledge, or hope, that it would be and was to be arranged by a certificate of deposit?

7. Did Downey say that John R. Hicks was his agent generally, or only his agent to receive money from Joseph T. Hicks?

8. Did you, or Hicks and Arnold, ever recover the debt due you by the bank, and why?

9. When John R. Hicks came about the 10th of January, 1839, did he have or exhibit any papers, other than the letter from Downey to Hicks concerning the account between Hicks and Downey; and were any such papers shown or examined before the check or certificate was received; was not all the papers that were produced, if any other than the letter, produced by Joseph T. Hicks, and what were they; if John R. Hicks made out any account, or made any entries, did he make such account or entries from statements made by Joseph T. Hicks, or memoranda furnished by him; or on what evidence or grounds did he make out such account or entries?

10. When did you first learn or hear that S. S. Downey insisted upon Joseph T. Hicks making good to him the amount of the certificate of deposit; did you not hear of that as early as the fall of 1849, or when?

11. Did you know the amount due 10th January, 1839, by Joseph T. Hicks to S. S. Downey, or could you have stated an account showing the amount due, and how would you have stated; did John R. Hicks know more about this matter than you did, and how did he acquire such knowledge?

12. On an average, how much did the hands hired from Downey

make from the contract with the railroad, in debt due by the road; how much did men earn per day, as near as you can state it?

13. If Downey said any thing about a settlement, did the conversation refer to a settlement of accounts between him and Hicks, or mainly or entirely to the receipt of the certificate of deposite on account of the debt?

14. When did your partnership with Joseph T. Hicks commence?

15. Did you not hire Downey's negroes before that time?

16. Did John R. Hicks give any receipt for the certificate; if so, do you know where it is? And furnish a copy thereof.

17. In answering the 15th interrogatory, you will please state all the evidence on the trial, by whom given, the arguments of counsel, and the instructions of the court, and for what the suit was brought; if you answer that interrogatory that the suit was decided in your favor.

18. At the time John R. Hicks took the certificate of deposit or the check, was any thing said about who was to take the risk of the solvency of the bank, and what was said on that subject; was any special contract made about that; was not the check or certificate given as good and solvent?

19. Which of the two, Downey or Joseph T. Hicks, had the best opportunity for becoming acquainted with the condition of the railroad bank, and state where Downey was from 1836 to 1840, and where Hicks, and how employed?

20. What hire per day did the railroad agree to pay for the negroes to you and Hicks from 1st January, 1840?

21. What amount was due you and Hicks by the bank about the 1st November, 1839, and have you ever collected that debt?

22. Do you or not know that Joseph T. Hicks received letters from S. S. Downey during the year 1839; did you ever see any such letters, or hear him say that he had received any, and how many?

23. At your first acquaintance with Joseph T. Hicks, was he possessed of any property or capital, and what and how much property did he have at his death?

24. Have you stated any thing not within your own knowledge, but which you heard from others; if so, point out such matters particularly?

MASON & BURWELL.

Let commission issue upon these interrogatories and cross interrogatories without further notice; the commission to be filled up hereafter with the name of the commissioner. We reserve only objections to the competency of the testimony.

MASON & BURWELL.

February 27th, 1849.

UNITED STATES OF AMERICA,
Southern district of Mississippi,
Circuit court, U. S.

I, William H. Brown, clerk of said court, do hereby certify, that

the foregoing interrogatories and cross interrogatories are truly copied from the original on file, in the case therein named, in my office.

Given under my hand and seal of said court, at Jackson, this 14th day of March, A. D. 1849.

[L. S.]

W. H. BROWN, *Clerk*,
Per CHS. H. ROGERS, *D. C.*

Pursuant to the annexed commission, to me directed, from the circuit court of the United States, for the southern district of Mississippi, directing and empowering me to take the deposition of Andrew Arnold, to be read in evidence on the trial of a suit pending in said court, wherein Samuel S. Downey is plaintiff, and Mary M. Hicks, executrix of Joseph T. Hicks, deceased, defendant; I, the undersigned, one of the justices of the peace in and for the county of Armstrong, in the State of Pennsylvania, have caused the said Andrew Arnold to come before me in my office in Kittanning, county aforesaid, on Wednesday, the 4th day of April, 1849. And the said Andrew Arnold, being of full age, was first duly sworn by me to depose the truth, the whole truth, and nothing but the truth in the premises; and so qualified by me, he deposeth and saith:

To the 1st interrogatory of defendants I answer:

I was present at a settlement which took place some time between the 1st and 10th of January, eighteen hundred and thirty-nine, between Dr. John R. Hicks, acting as agent of Samuel S. Downey and Joseph Amis; John R. Hicks, at the time above mentioned, came to Joseph T. Hicks and Arnold's contract on the Mississippi railroad, about twenty miles from Natchez; the said J. T. Hicks and John R. Hicks, as the agent of Samuel S. Downey and Joseph Amis, there made a settlement in my presence of the whole of the negro hire of Samuel S. Downey, Joseph Amis, and John R. Hicks' own negroes, from the year 1836 up to that time; and the balance due S. S. Downey, at that time from J. T. Hicks, amounted to upwards of nine thousand dollars; at that time the Mississippi Railroad Company, and Mississippi Railroad Bank, at Natchez, were indebted to J. T. Hicks and myself, I think, not less than twenty thousand dollars; and after the settlement was made J. T. Hicks and John R. Hicks went away together. The whole of the negro hire at that time amounted above sixteen or seventeen thousand dollars; and the said J. T. Hicks charged himself in the books of Hicks & Arnold with the amount.

To the 2d interrogatory of defendants I answer:

At the time of the settlement in January, 1839, referred to, Joseph T. Hicks drew a check or checks on the Mississippi Railroad Bank, at Natchez, for the whole balance of negro hire due from J. T. Hicks to S. S. Downey, Joseph Amis, and John R. Hicks, which amounted to about seventeen thousand dollars; there might have been separate checks for the amount due to each of the gentlemen, or the whole may have been included in one, and they took the check or checks with them when he and John R. Hicks went to Natchez, to draw

the money out of bank to pay the amount of said negro hire. The Mississippi Railroad Bank at that time, and for some considerable time afterwards, were paying specie on all demands made upon it, so far as I know. And, in a few days afterwards, J. T. Hicks and John R. Hicks returned from Natchez.

On the first of November, 1839, the notes of the bank were at a discount of about ten per cent. in Natchez.

The notes declined gradually, and on the 16th of November, 1839, I purchased three drafts of one thousand dollars each, of, I think, Bennet & Co., of Natchez, on some house in New York, at a discount of sixteen per cent., and could have negotiated twenty thousand dollars at the same time; and if I had had the certificate of deposit or the control of them for the money left in the hands of the bank on the 1st of November, 1839, I could have secured them at a discount of not more than ten per cent. for eastern funds, which at time were at a premium of from three to four per cent.; but I never had control of the funds, nor had J. T. Hicks any control of the funds to my knowledge.

Samuel S. Downey never called on the bank for his money until some time in the last of February or first of March, 1840, when he came on to receive his negroes, as he told me at that time.

To the 3d, 4th, and 5th interrogatories of the defendants I answer:

Some time in the last of February or first of March, 1840, Samuel S. Downey and John R. Hicks came to Hicks & Arnold's residence in Washington, Mississippi, where we were at work for the Mississippi Railroad Company by the day, where I had a conversation with Samuel S. Downey respecting the settlement which John R. Hicks, as his agent, had made with J. T. Hicks in January, 1839, above referred to; Samuel S. Downey then told me that he had sent out his negroes from North Carolina to Mississippi, in 1836, in the care of Joseph T. Hicks, as his agent, to do the best he could with them, as he had understood wages were good in Mississippi; and as he could not come out himself to settle with Joseph T. Hicks, he had appointed John R. Hicks his agent, to settle with Joseph T. Hicks for the whole of Joseph T. Hick's agency of his negroes to the time said settlement was made by John R. Hicks and Joseph T. Hicks, and to receive the pay; and that he was well pleased with Joseph T. Hicks as he had rendered an honest account of every thing; and he was satisfied with the settlement which John R. Hicks, as his agent, had made with the said Joseph T. Hicks; but that he was not satisfied with John R. Hicks for leaving the money on deposit in the bank, and that he ought to have drawn it at the time, when it might have been got. Samuel S. Downey said if the money had been lost under the arrangement of Joseph T. Hicks, he would never have complained, as J. T. Hicks was his agent, and he had not time to come out himself and settle with him, or he would have got his money when the bank was good. Afterwards, in another conversation which I had in Natchez with said Downey, about the middle of March, 1840, the day before he left for home, Samuel S. Downey

repeated the same in substance to me, which he had done in our conversation at Washington.

To the 6th interrogatory of defendants I answer:

I know of no indebtedness by J. T. Hicks to Samuel S. Downey, other than that which John R. Hicks settled with J. T. Hicks, on or about the 10th of January, 1839. About the 1st of January, 1839, Hicks and Arnold became indebted to Samuel S. Downey, John R. Hicks, and Joseph Amis, for negro hire, commencing about the 1st of January, 1839, and ending about the 1st of October, 1840, for the following bonds, viz: to Samuel S. Downey, four thousand eight hundred dollars, by bond dated 1st of January, 1839, payable 1st of January, 1840; also two thousand and fifty-eight dollars, by bond dated 6th March, 1840, payable 9th of October, 1840; also four hundred and fifty dollars, by bond dated the 1st of March, 1840; which last mentioned bond was to be paid in such funds as Hicks and Arnold might receive from the Mississippi Railroad Company, and was never to be paid if said funds *was* never received by them; which said funds *has* never been received to my knowledge.

To Joseph Amis two thousand two hundred and fifty dollars, by bond dated 1st of January, 1839, payable 1st May, 1840; also eight hundred and twelve dollars, by bond dated 6th March, 1840, payable 9th October, 1840; also a small bond, to be paid in the same manner as the last mentioned to S. S. Downey. To John R. Hicks three thousand dollars, by bond dated January, 1839, payable 1st of January, 1840; also twelve hundred dollars, by bond dated 6th March, 1840, payable 9th October, 1840; also a small bond, to be paid in the same manner as the last mentioned bonds to S. S. Downey; which last mentioned bonds to Joseph Amis and John R. Hicks, being the three small bonds which were never to be paid if the funds in which they were payable *was* never received; which funds never *has* been received to my knowledge.

The aforesaid indebtedness did not accrue till after the settlement which John R. Hicks, Downey's agent, had made with J. T. Hicks, Downey's former agent, for which the check or checks were given.

The bonds referred to above were given after the settlement referred to, but the three of them which were dated on or about the 1st of January, 1839, were not dated so as to bear date at the time they were delivered, but were antedated so far as to bear date a few days before their delivery, and a few days before the check or checks *was* given.

To the 7th interrogatory of defendants I answer:

That no indebtedness did exist other than that mentioned in my answer to the 6th interrogatory; to secure the payment of the foregoing bonds, mentioned in my answer to the 6th interrogatory, on the 11th of March, 1840, at the office of Buckner, Barrow & Stewart, in Natchez, Hicks and Arnold transferred to Joseph Amis, S. S. Downey, and John R. Hicks, as collateral security for payment of the said several sums of money mentioned in my answer to the 6th interrogatory, about ten thousand dollars, which was placed to our credit on the book

of the bank of the Mississippi Railroad Bank; and at the same time Hicks and Arnold, or myself, also transferred to the said Downey, Amis, and John R. Hicks, as collateral security for the payment of said debts mentioned in my answer to the 6th interrogatory, a claim Arnold, or Hicks and Arnold, had against the Mississippi Railroad Company, amounting to about eleven thousand dollars, which had not yet been transferred to the books of the banks; in all making about twenty-one thousand dollars. These transfers were not made as absolute payment, but as collateral security for the payment of the said bonds mentioned in my answer to the 6th interrogatory. And if the money could not be realized out of these two funds, we considered ourselves at the time bound to pay them, except the three small bonds, the one of $226 51, another $450 00, the amount of the other not recollected; which small bonds were not to be paid if the money could not be realized off the railroad company.

To the 8th interrogatory of defendants I answer:

The transfers mentioned in the 7th interrogatory were not made to secure the debt which was settled by John R. Hicks with Joseph T. Hicks, about the 1st of January, 1839, but was made to secure the bonds mentioned in my answer to the 6th interrogatory.

To the 9th interrogatory of defendants I answer:

That after the assignment or transfer mentioned or referred to in my answer to the 7th interrogatory, Joseph T. Hicks and myself did agree to pay the debt for which the assignment as collateral security *were* made, as mentioned [in] my answers to the 6th and 7th interrogatories of the defendants, if the Mississippi Railroad Bank and Company failed to pay it; except the three small bonds, which were never to be paid unless realized from the railroad company.

To the 10th interrogatory of defendants I answer:

There was no such agreement, and there was present at the time this agreement was made, Buckner and Stewart, David Cordery, John R. Hicks, Samuel S. Downey, Joseph T. Hicks, and, I believe, Mr. Barrow; I believe the agreement was made on the 11th of March, 1840, and in the office of Buckner, Barrow & Stewart, in the city of Natchez.

To the 11th interrogatory of defendants I answer:

There never was any agreement made by Hicks and Arnold, nor Joseph T. Hicks, in my presence, to guaranty or pay the check or checks which was given to John R. Hicks as agent for S. S. Downey by J. T. Hicks, on the settlement in January, 1839, neither at that time or any other time, in my presence; nor ever was it claimed, that I heard of, until I heard S. S. Downey had brought suit against J. T. Hicks's estate.

To the 12th interrogatory of defendants I answer:

Messrs. Buckner and Stewart were present when the assignment was made, which is referred to in my answers in the 7th and 9th interrogatories, and it was drawn by Mr. Buckner.

To the 13th interrogatory of defendants I answer:

There was not any such promise or agreement as mentioned in the

9th interrogatory made in the presence of Messrs. Buckner and Stewart, nor in the presence of any other person, in regard to the check or checks paid to John R. Hicks in January, 1839, nor was it spoken of, to my knowledge; I always considered that that debt was fully paid by J. T. Hicks at the time of the settlement, in January, 1839, nor did I ever consider myself responsible for that debt individually, or as a partner of the firm of Hicks & Arnold.

To the 14th interrogatory of defendants I answer:

Shortly before the aforesaid assignment of the eleventh of March, 1840, Samuel S. Downey, Joseph T. Hicks, and myself, were at the Mississippi Railroad Bank, at Natchez, were we had a considerable conversation with Eli Montgomery, who was the president of said bank, trying to make some arrangement with the bank to pay the claims which Hicks & Arnold had against the bank and railroad company, and which we wanted to transfer to S. S. Downey, Joseph Amis, and John R. Hicks, on the 11th of March, 1840, as collateral security for payment of said bonds mentioned in my answer to the 6th and 7th interrogatories; in order to release our liability to pay said bonds, Joseph T. Hicks and myself, in the presence of S. S. Downey, requested Eli Montgomery to have one claim of about eleven thousand dollars against the Mississippi Railroad Company, which was entered to our credit on the books of the railroad company, which we wanted transferred to the books of the Mississippi Railroad Company, and placed to the credit of Joseph Amis, S. S. Downey, and John R. Hicks, to whom we wanted to transfer it as collateral security as above stated, which Eli Montgomery agreed to at that time to have done, but the next day or two refused to do it; Hicks & Arnold told Eli Montgomery at that time we wanted the transfer made to enable Joseph Amis, John R. Hicks, and S. S. Downey to collect the money and release Hicks & Arnold from the payment of those bonds, which we were bound to pay if they could not collect the claims transferred to them of the Mississippi Railroad Bank and Railroad Company, except the three small bonds for negro hire in 1840, and we were very anxious to have this transfer made by Eli Montgomery, as our attorneys had instructed us to have it done, in order to enable the said Downey, Hicks, and Amis to bring suit against said bank in the U. S. court; but no arrangement was made at that time, or any other time, by J. T. Hicks and myself, or attempted to be made by Hicks & Arnold, or either of us, in my presence, in relation to the checks which Joseph T. Hicks had paid to John R. Hicks at the time of the settlement in January 1839, which has been referred to, for the payment of the debt which it was given; nor did Hicks & Arnold, or either of us, in my presence, at that time or any other time, ever state that we considered ourselves liable for the payment of the check or the certificate held by Mr. Downey, if the said check or certificate was not paid by the bank, nor did I ever consider myself liable for either the debt or checks; about this fact I cannot be mistaken, and such an admission made in my presence could not have escaped my notice; during the above conversation Downey was always present. In

460.

May or June, 1838, Joseph T. Hicks and myself first became partners, for the first time, in contract on the Mississippi railroad; Joseph T. Hicks had at that time under his control about forty negroes; I settled with Joseph T. Hicks, who made a calculation of the amount of the negro hire up to the first of January, 1839, and he was paid by entering a credit to him on the books of Hicks and Arnold for the amount. Some time in the winter of 1841, I think the month of January, S. S. Downey came to Kittanning, in Pennsylvania, where I resided, and told me that he had come to collect of me the note or bond for $4,800 00, dated 1st of January, 1839, and due 1st of January, 1840. I asked him if J. T. Hicks had paid him the bond due Joseph Amis for $812, dated 6th March, 1840, and his own bond for $2,058, dated 6th March, 1840, and due 9th October, 1840? S. S. Downey told me that Joseph T. Hicks had paid him every cent of those two late bonds. The reason I asked the question was, because I had left my part of those debts in Joseph T. Hicks's hands to discharge those bonds. I then asked said Downey, in presence of H. N. Lee, esq., of Kittanning, if he had any other claims against Hicks and Arnold, or myself, than the said bond of $4,800? Said Downey replied that he had no other claim against Hicks and Arnold, or either of them, than the said bond of $4,800, and the small bond of $450 for negro hire in 1840; and that he did not care any thing about the small bond or note if he never got it, but he would make me pay the amount of the $4,800 bond; he brought suit on the bond in Pittsburg; I paid S. S. Downey's attorney the full amount of the $4,800 bond, dated 1st January, 1839. The note of about $450 was given for negro hire, from the 1st of January, 1840, to some time in March, 1840. Hicks and Arnold hired some negroes from J. R. Hicks, as the agent of Samuel S. Downey, for the year ending 1st of January, 1840; at the expiration of the year no person came to receive them; Hicks and Arnold had finished their contract, and moved into Natchez, with all our negroes; and as no person came to receive the negroes in January, 1840, they would have been an expense to their owners had we not employed them. The Mississippi Railroad Company agreed that we might employ the negroes on the railroad, by the day, in repairing the railroad; we did so, and employed some of S. S. Downey's negroes among the rest, and worked them by the day on said road from the 1st of January, 1840, to some time in March following. A few days before we quit work, John R. Hicks and S. S. Downey came to Natchez, and S. S. Downey said he was well pleased that we had employed his negroes, and kept them [free] of expense. At this time the funds of the Mississippi Railroad Bank had depreciated very considerably, and Joseph T. Hicks and myself told S. S. Downey that we could not pay him good funds for the hire of his negroes, while we were working on the railroad by the day. Downey said he was well pleased with what we had done, and that he would take the same kind of funds in pay for the negro hire for that time, that Hicks and Arnold might get from the railroad company, and he agreed to wait for his pay until it should be collected

off the railroad company, which it has never been done, although suits *suits* have been brought for that purpose.

To the 15th interrogatory of defendants I answer:

I have been sued by S. S. Downey in the western district court of the United States for Pennsylvania, and the cause was decided on its merits in my favor. The plaintiff's claim was for the check, or checks, or certificate of deposit aforesaid.

To the 16th interrogatory of the defendants I answer:

I am not interested [in] this case; I have a release from Mary M. Hicks, the surviving executrix of Joseph T. Hicks, deceased, which is marked with the letter A, and which is hereto attached.

To the 17th interrogatory of defendant I answer:

I have examined the release executed by me to the defendants in this case, and which is marked B, and is hereto attached, and was executed before giving my testimony in this case.

To the 1st cross interrogatory of the plaintiffs I answer:

When John R. Hicks came to the residence of Hicks and Arnold on the contract, about twenty miles from Natchez, about the first of January, 1839, John R. Hicks told Joseph T. Hicks that he had full authority from S. S. Downey and Joseph Amis to make a settlement with him for all his (Joseph T. Hicks') agency for S. S. Downey and Joseph Amis's negroes, from the time he had come in to Mississippi with the negroes up to that time. J. R. Hicks showed J. T. Hicks some letters or papers, which seemed to satisfy Joseph T. Hicks that the said John R. Hicks had the authority to settle the negro hire; the number of papers he showed I am not able to say; I believe I never read them; but that the paper or papers were showed before they went into a settlement.

To the 2d cross interrogatory of the plaintiff I answer:

Joseph T. Hicks brought the agency books, in which he had kept the account of S. S. Downey, John R. Hicks, and Joseph Amis, respecting the hire of their negroes, and laid them on the table, to the best of my recollection; John R. Hicks sat down and cast up the accounts, and made out the balance between them, amounting to about seventeen thousand dollars, for which a check or checks were given. There was no other books or accounts brought there on that settlement, to the best of my knowledge, and the settlement was final and conclusive, and nothing said about leaving the matter open for a future settlement with Downey; and, as I understood, every thing was settled satisfactory.

To the 3d cross interrogatory of the plaintiff I answer:

There was a settlement between the parties mentioned above; I cannot recollect of John R. Hicks having any contract for negro hire, or copies or memorandums of the same at the time of said settlement; I know of no special contract between Downey and Joseph T. Hicks at that time.

To the 4th cross interrogatory of the plaintiff I answer:

A check or checks were given to John R. Hicks, and it was expected,

and believed, and intended, that the same would be paid on presentment at the bank; Hicks and Arnold had the amount of cash referred to in said bank, and more; they had at that time at least twenty thousand dollars on deposit, and on the books of the railroad company; the amount on the books of the company was transferable to the bank at the time, and could be transferred at any time when called on, as Hicks and Arnold commenced leaving such portions of their estimates back with said railroad company as they did not need to carry on their business in July or August, 1838, and continued leaving the same until the fall of 1839; I dont't recollect when Hicks and Arnold commenced making their deposits in the bank. The railroad company and banking business was generally attended to by J. T. Hicks; when the check or checks were given, there was no understanding, expectations, or agreements that the check or checks were to be arranged by a certificate of deposit, or payable at a future day, but I believed the same would be paid when presented. Joseph T. Hicks did go with his brother, John R. Hicks, to Natchez, not to carry out any arrangement, but merely to accompany him, and I believe it was with that view he went. I never did know the bank to pay at one time $17,000 of specie, nor do I know the largest amount the Mississippi Railroad Bank paid at any one time, nor when; nor do I know how much the bank paid from the 10th of January, 1839, at any one time, nor how much altogether; but I do know that at that time the railroad bank paid Hicks and Arnold all they called on, and never knew it refused to pay any person at the counter at that time.

To the 5th cross interrogatory of the plaintiff I answer:

The railroad bank and railroad company owed Hicks and Arnold the above $17,000, and I believe $20,000; about the 10th of January, 1839, the check or checks, to the best of my knowledge, were not to be transferred in any way, but to be paid when presented.

To the 6th cross interrogatory of the plaintiff I answer:

Joseph T. Hicks and his brother, J. R. Hicks, commenced to settle shortly after dark; I was sitting in the room when they were settling; they finished their settlement about common bed time; I was in their hearing during all the time they were settling till they finished; and I was generally in their company after the settlement, till they started to Natchez next morning after breakfast. The check or checks was not given under any arrangement, but to be paid, and I believed the same would be paid, when presented, to the best of my recollection.

To the 7th cross interrogatory of the plaintiff I answer:

S. S. Downey told me on several occasions that he had appointed John R. Hicks to settle all his business with Joseph T. Hicks, his former agent.

To the 8th cross interrogatory of the plaintiff I answer:

Hicks and Arnold, nor myself, never received the debt due from the bank on account of insolvency of said bank.

To the 9th cross interrogatory of the plaintiff I answer:

I have given a full answer to this interrogatory in my answer to the 2d cross interrogatory of the plaintiff.

To the 10th cross interrogatory of the plaintiff I answer:

The first time I heard of S. S. Downey insisting upon Joseph T. Hicks making good to him the amount of the certificate, was after the said Downey had brought suit against Joseph T. Hicks, or his estate in Mississippi, to recover the amount of said certificate; this I heard by letter from Benjamin J. Hicks, which suit was commenced, to the best of [my] knowledge, one or two years after the fall of 1849.

To the 11th cross interrogatory of the plaintiff I answer:

I believe the amount due about the 10th of January, 1839, from Joseph T. Hicks to S. S. Downey, was about $9,000, for the hire of his negroes, which was included in the check or checks of about $17,000. If I had the books containing the account I believe I could have stated it correctly; I cannot tell what John R. Hicks knew about the matter, nor how he got his knowledge.

To the 12th cross interrogatory of the plaintiff I answer:

As I have not access to the books which are in Mississippi, I cannot state the average price of each or any of the hands hired from S. S. Downey, nor the price per day men got at that precise time.

To the 13th cross interrogatory of the plaintiff I answer:

S. S. Downey spoke in my presence several times, and I understood from him that the settlement, between John R. Hicks and Joseph T. Hicks, was in full of all Joseph T. Hicks' agency for said Downey.

To the 14th cross interrogatory of the plaintiff I answer:

My partnership with Joseph T. Hicks commenced some time in May or June, 1838, to the best of my recollection.

To the 15th cross interrogatory of the plaintiff I answer:

Arnold, Dickey & Co., hired some negroes from Joseph T. Hicks in the fall of 1837, and worked them till some time in the spring of 1838, before Hicks and Arnold entered into partnership; and I believe Downey owned some of them; I understood so afterwards.

To the 16th cross interrogatory of the plaintiff I answer:

John R. Hicks did give Joseph T. Hicks a receipt for the certificate, which John R. Hicks said he took from the railroad bank for a deposite he made there for Downey to pay said debt. All the knowledge I have of what became of said receipt is from the depositions of Benjamin J. Hicks, Mr. Yerger, who testified that the said receipt was burned in said Yerger's office, in Vicksburg. They sent me a copy of said receipt, with their depositions; all of which are filed in the circuit court of the United States, for the western district of Pennsylvania; for which reason I cannot send a copy.

The 17th cross interrogatory of the plaintiff I answer:

In the 15th cross interrogatory of plaintiff, and further state, that I am unable to give you all the evidence in the case referred to, but will give some of the evidence, the argument of the counsel, and charge of the court, to the best of my recollection. The deposition of Captain David Cordery went to show that I owed S. S. Downey nothing at

the time of said trial; the evidence of John R. Hicks and others showed near about the same.

The argument of Downey's counsel was, that I owed Downey the amount the suit was brought for to recover. My counsel did not argue the case at all; and the court charged the jury in my favor. The suit was brought to recover of me a claim for negro hire, and the amount of the certificate of deposite in this case now pending.

To the 18th interrogatory of the plaintiff I answer:

When the check or checks was given there was nothing said about the risk of the solvency of the bank, nor was there any special contract made about any risk, in my presence. I believe the check or checks was given as good and solvent. I was not present when John R. Hicks made the deposite and took the certificate; but John R. Hicks told me, a few days after, that he had made a deposite for Downey and took a certificate for the same.

To the 19th interrogatory of the plaintiff I answer:

I believe Joseph T. Hicks had a better opportunity of becoming acquainted with the condition of the bank than S. S. Downey had. I never saw S. S. Downey before the spring of 1840, to the best of my knowledge. Joseph T. Hicks was in the neighborhood of Natchez from 1836 to 1840.

To the 20th cross interrogatory of the plaintiff I answer:

The railroad company agreed to pay one dollar per day for able men, and 75 cents for women and boys, to the best of knowledge. Owing to sickness among the hands, a number of them were not worked in the winter; and some of Downey's hands were among that number. I now speak of the hands hired from 1st of January, 1840, to some time in March, 1840, and from the best of my recollection.

To the 21st cross interrogatory of the plaintiff I answer:

I think about November, 1839, the bank and railroad company might have owed Hicks and Arnold from thirty to thirty-five thousand dollars, and we reduced that amount to about twenty *twenty*-one thousand dollars from the 1st of November to some time in February, 1840, at a discount of fourteen to sixteen per cent.; which twenty-one thousand dollars, with interest, is yet unpaid.

To the 22d cross interrogatory of the plaintiff I answer:

I know of Joseph T. Hicks having received two or three letters from S. S. Downey during the year 1839; he, Joseph T. Hicks, told me so; I have no recollection of having read one of them.

To the 23d cross interrogatory of the plaintiff I answer:

At my first acquaintance with Joseph T. Hicks, I cannot state how much property he had; but in the spring of 1838, when he and I entered into partnership, Joseph T. Hicks claimed a family of negroes he said he inherited from his father's estate—in all, 6 or 7; also had three or four thousand dollars, after the payment of all his debts which I had any knowledge of.

To the 24th cross interrogatory of the plaintiff I answer:

The sources from which I received my information, as to anystate-

ments set forth in the foregoing interrogatories and cross interrogatories which was not within my own knowledge, are specifically set forth in my answers to the respective interrogatories.

ANDREW ARNOLD.

A. L. ROBINSON,

Commissioner.

I, the undersigned commissioner, certify, that the above deposition of Andrew Arnold was sworn to and subscribed in my presence, it having been first carefully read over to the said witness, by whom it was well understood and approved; all which was done in my presence, at the time and place stated in the caption hereof; and the whole of it, save only the signature of the witness, is in the handwriting of the said commissioner. The undersigned doth further certify, that he is not of kin to either party; that he has no legal interest in the suit; nor is in anywise interested therein. The undersigned doth further certify, that after the same was sworn to and subscribed, he caused it to be sealed up, without being in anywise altered, and addressed it to the clerk of the proper court; the whole of the address, &c., being also in the proper handwriting of the undersigned.

Witness my hand and seal, at Kittanning, Armstrong county, Penn., this 7th day of April, 1849.

A. L. ROBINSON, [L. S.]

Acting justice of the peace.

(*Copy of releases attached to said deposition.*)

Know all men by these presents, that I, Mary M. Hicks, surviving executrix of the last will and testament of Joseph T. Hicks, dec'd, for and in consideration of the sum of ten dollars, and divers other good causes and considerations me thereunto moving, do hereby release to Andrew Arnold, a partner in the late firm of Hicks & Arnold, all demands of every kind and description which I have or may have against said Arnold for contribution on any indebtedness or supposed indebtedness of the late firm of Hicks & Arnold to S. S. Downey, or for or on account of any indebtedness of said firm to any other person of persons; it being my intention to release, and I do hereby release, said Arnold from all claims, demands, or suits, of every kind and description, or for contribution on account of any indebtedness of said firm to any person or persons whatever, and from all demands I now have, or may hereafter have, as executrix of said Joseph T. Hicks, dec'd, whether originating in said Downey's claim, or any other; hereby fully releasing and discharging him from all claims and demands whatever.

Witness my hand and seal, this 2d March, 1849.

MARY M. HICKS, [SEAL.]

Surviving executrix of the last will and testament of Joseph T. Hicks, dec'd; marked A.

Witness—JOHN COWAN.

Know all men by these presents, that I, Andrew Arnold, for and in consideration of the sum of one dollar, to me in hand paid, for divers other good considerations me thereunto moving, do hereby release to Mary M. Hicks, surviving executrix of the last will and testament of Joseph T. Hicks, deceased, all demands of every kind and description which I have or may have against her as executrix of Joseph T. Hicks, deceased, in her representative character, for contribution on account of any indebtedness or supposed indebtedness of the late firm of Hicks & Arnold (of which firm the said Joseph T. Hicks and *and* the undersigned were partners) to S. S. Downey, or for or on account of any contribution or indebtedness of said firm to any other person or persons; it being my intention to release, and I do hereby release, said executrix and the estate of Joseph T. Hicks, dec'd, from all claims, demands, and suits, of every kind and description, which I have or may have against the said executrix of Joseph T. Hicks, deceased, in her representative character, or against the estate of the said deceased, whether originating in said Downey's claim, or any claim whatever; hereby fully releasing and discharging the said Mary M. Hicks, executrix as aforesaid, in her representative character as aforesaid, and the estate of the said Joseph T. Hicks, dec'd, from all demands, judgments, and claims, whether for contribution, or otherwise, which I have or may have against the estate of said Joseph T. Hicks, dec'd.

In witness whereof I have hereunto set my hand and seal, this 4th day of April, A. D. one thousand eight hundred and forty-nine.

ANDREW ARNOLD. [SEAL.]

Witness—A. L. ROBINSON. Marked B.

The pl'ff objected to the reading of said deposition in evidence to the jury, because the said witness was a partner with the defendant's testator, and incompetent to testify, as appears from the deposition offered; but the court overruled said objection, and permitted said deposition to be read. To which the pl'ff then and there before the jury retired excepted, and prayed this to be signed, sealed, enrolled, and made part of the record as his bill of exceptions; which is done accordingly.

Given under the hand and seal of the judge, May 13, 1850.

S. J. GHOLSON. [SEAL.]

SAMUEL S. DOWNEY)
vs. }
J. T. HICKS' ex'rix.)

Be it remembered, that, on the trial of this cause, before the honorable Samuel J. Gholson, judge, and a jury, the defendants offered to read the 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, and 20th interrogatories propounded to John R. Ricks, and the answers thereto as follows:

9th question by same. State particularly whether you informed him

you received it in payment of the debt due to him from Joseph T. Hicks; and state whether you did not also inform him what were the opinions of Gen'l Quitman and Joseph T. Hicks about the solvency of the bank, and state what these opinions were.

Answer to 9th question. I did inform him that I received it in payment of said debt; and informed him of the great confidence my brother had in the solvency of the bank, and his reasons, as set forth in answer to 8th interrogatory, for entertaining that confidence; and also informed him that my conversation with Genl. Quitman had confirmed me in the opinion entertained by J. T. Hicks.

10th question by same. At the time you received the certificate of deposit bearing 8 per cent. interest, and at the time Downey received it from you, was not the said Mississippi Railroad and Banking Company paying specie?

Answer to 10th question. It was paying specie.

11th question by same. Were not certificates of this kind then in demand by persons who had funds to invest?

Answer to 11th question. I cannot say that I was well informed on that subject, but know that their notes were in demand, and for the purpose of drawing the specie by the brokers.

12th question by same. After you delivered said certificate of deposit to said Downey, and told him you received it in payment, did not he express great satisfaction, and receive the same from you?

Answer [to] 12th question. After the conversations about the opinions of Joseph T. Hicks and Genl. Quitman, the president of the bank, was concluded, he, Samuel S. Downey, remarked that he had rather have had the gold and silver; but as I had done for him as I had done for myself he ought not to complain.

13th question by same. Did he, to your knowledge, ever express any dissatisfaction at the arrangement, or repudiate your acts in receiving it, until after the bank stopped paying specie in June, 1839? And state what time he first became dissatisfied.

Answer to 13th question. I never received any intimation that he, Samuel S. Downey, was disposed to repudiate my acts in receiving the certificate of deposite, until some months after suit was brought in the United States court at Jackson, Mississippi; I think it was in the fall of 1840.

14th question by same. Did Samuel S. Downey ever, to your knowledge, before June or July, 1839, inform or write to *to* Joseph T. Hicks that you had no authority to receive said certificate in payment, and that he would refuse to acknowledge your act in receiving it?

Answer to 14th question. I never heard either from Joseph T. Hicks or Samuel S. Downey of any such letter or information, until the fall of 1840.

15th question by same. Was not the railroad company at the time of said settlement in January, 1839, largely indebted to Joseph T. Hicks?

Answer to 15th interrogatory. The railroad company was largely indebted to Joseph T. Hicks in January, 1839.

16th question by same. Was not the said certificate received by you in payment of what Joseph T. Hicks, and not Hicks & Arnold, owed said Downey?

Answer to 16th question. The certificate of deposite, as I understood, included a debt due both from Joseph T. Hicks and from Hicks & Arnold; there was a small amount, as I understood, of money which Joseph T. Hicks had collected of Welman & Mills, as agent of Saml. S. Downey, and a small debt for hire of negroes by Joseph T. Hicks while at work on the road near Jackson, and the balance was due from Hicks & Arnold.

17th question by same. Did said Downey ever offer said certificate for sale and ask a premium for it? State all you know about this.

Answer to 17th question. I know nothing of his offering the certificate for sale; he remarked to me, I think, at the May court, 1839, that I must not let Abraham W. Venable have my certificate for *he* that he was keen to get this certificate, and that he would be enabled to obtain a premium for them; I heard nothing more afterwards.

18th question by same. Did not Downey pay part of the expenses of your trip to Mississippi, at the time said certificate was received by you, in consideration of your agreeing to attend to his business?

Answer to 18th question. He did not pay any part of my expenses.

19th question by same. Did you ever hear Hicks & Arnold, in the office of Buckner & Stewart, admit that they were liable for the payment of this certificate of deposite, if it could not be got from the bank?

Answer to 19th question. I never heard them make such admission in the office of Buckner & Stewart, or any where else.

20th question by same. If any admissions were made in said office, what debt was then alluded to; or, in other words, state whether Hicks & Arnold did not owe to said Downey a large amount of money, independent of said certificate of deposite, which was secured by the paper of the said bank, delivered as collateral to said Downey; and state whether such conversation was not in relation to this indebtedness?

Answer to 20th question. In order to give an answer understandingly to this question, I will give a history of the whole transaction in the office of Buckner, Barrow & Stewart, for the three were in copartnership.

After various attempts were made by Samuel S. Downey, for himself, and as agent for Colonel Joseph Amis, by John R. Hicks, and by Hicks & Arnold, to effect a compromise with the bank for the amount, and the different parties, various propositions were made by the bank, to give mortgage of Planter's Bank stock, Natchez city stock, and some other funds not now recollected; all of which were rejected. Mr. Downey determined for himself and Colonel Amis, in counsel with Hicks & Arnold and myself, that unless the bank would give a mortgage on the banking house and railroad depot, that suit should be instituted against the bank. The bank rejecting the proposition, Mr.

Downey proposed a suit, and, after making due inquiry as to the standing of the lawyers of Natchez, determined to employ Buckner, Barrow & Stewart. On going to their office Mr. Downey informed them of the object of our visit, and stated to them that he wished a judgment as speedily as possible. Mr. Buckner informed him the docket of the Mississippi courts were so crowded that a judgment could not be very speedily obtained, and it would be best to bring suit in the United States court. Mr. Downey, for himself and as agent for Colonel Amis, delivers to the attorneys their certificates of deposit, and takes their receipt for the same, to have suit brought upon them; and I handed to them my certificate, and took their receipt for the same purpose. When Hicks & Arnold came forward with their claims, Mr. Buckner remarked to them that they were now residents of the State, and could not sue in the United States court; but remarked, that the suit could be brought in the United States court by making an assignment to some one out of the State; accordingly an assignment was agreed upon to be made to Samuel S. Downey. Major Arnold remarked, that they were indebted to Mr. Downey the sum of about five thousand dollars, which was for negro hire for the year 1839, and for the months of January and February, 1840. Mr. Buckner remarked that there was no impediment to making the assignment. The assignment was accordingly made; and, after it was completed and signed, Major Arnold remarked to Mr. Downey, that *he* when the debt was collected he could take his pay, and pay over the balance to them; the assignment was made for the sole purpose of bringing suit in the United States court, and had no reference to the certificate of deposite. The conversation about debt alluded to the debt of about five thousand dollars, and had no reference to the certificate of deposite.

To which the plaintiff objected, because the said interrogatories are leading questions, and improper to be asked, and the answers incompetent and improper testimony; but the court overruled the objection, and permitted said interrogatories and answers to be read to the jury; to which the plaintiff then and there excepted before the jury retired, and prayed this to be signed, sealed, enrolled, and made part of the record, as his bill of exceptions; which is done accordingly.

Given under the hand and seal of the judge, May 13th, 1850.

S. J. GHOLSON. [L. S.]

3d bill of exceptions tendered by plaintiff.

Be it remembered, that, on the trial of this cause before the hon. Sam'l J. Gholson, judge, and a jury, the plaintiff read in evidence to the jury the following letters in the handwriting of defendant's testator. (Letter No. 1.)

CLINTON, *August 3d*, 1840.

Mr. DOWNEY.

DEAR SIR: I have waited a long time to hear from you, but so far I

have been disappointed. I have not heard whether you had gotten home safe or not. I spoke to Judge Hughes about that note that was left with him for collection; he did not seem to know whether it was collected or not; I have been to Jackson only once since you left here. I cannot hear whether the lawyer in Natchez did anything or not. It is generally supposed that the Planters' bank will sustain itself; if it does, our debt in the Railroad bank will be good; if not, it will not be worth much. I should have sent Col. Amis some money before this time, but we have received nothing but N. Orleans money from this company yet.

Tell Doct. Hicks that I had to take my money back again from Gibson, on account of his not being able to make a title to the river land; and if he can possibly make arrangements to be here before the middle of September, I would be glad that he would do so, and have all papers here against Hicks & Arnold, so that we may have all things arranged before Maj. Arnold leaves. I think you had better come with him, and make arrangemeuts for settling your plantations, and bring all your papers with you. I have had a great deal of sickness among the hands. The deaths that have occurred you have heard through Dr. Hicks, as my letters to him have been intended for all of you. Col. Amis's Stephen, Ben, and Dinah have been exceedingly ill, but they are all walking about again; neither of them will be able to work again on this job. Two of my own are very sick, but they are improving. Maj. Arnold is very sick. We will finish our work this month. Your Mary has not worked any since you left, on account of her breast complaint. If you all can come by the first, or middle of September, you will confer a favor on your friend

J. T. HICKS.

(Letter No. 2.)

RAILROAD, *Sept. 27th*, 1838.

MR. DOWNEY.

DEAR SIR: I received a letter from John a few days ago, which I intend answering in a few days. I have but little to write. The negroes are all well, but some of them have been exceedingly ill. I have been very fortunate whenever I have been in the habit of prescribing and administering medicine. We have cleared $16,000 00 already on our contract, and will clear about $5,000 more. We will finish our present contract next month. We have a new one, and a better one than the old one. We owe no debts at all, only those you are acquainted with, viz., for the hire of negroes; fortune seems to smile on all our undertakings. We expect to get another contract in a few days, by which we calculate to make $20,000 00 in about 3 months. My partner has never yet lost money on public works, and he has been at the business about sixteen years.

Tell Col. Amis we will take his hands another year, and all we can get. I have been sick 3 times this year, and at one time I was very

sick. I began to think of travelling into another world. The sickly season has passed, and health is again returning to our country. The cause of my writing so seldom is the want of time; I have written these few lines to allay your anxiety, as it must necessarily be great at this season of the year. I think in one more year I shall be able to retire from business, or at least from this unwholesome climate; the fatigue and anxiety which I am compelled to undergo in this country during the sickly season are enough to break any one down. Write soon. Your friend,

JOSEPH T. HICKS.

(Letter No. 3.)

Mr. DOWNEY.

NEAR NATCHEZ, *June 20th*, 1837.

DEAR SIR: I visited Jackson the week you left there, and saw your name on the register. I was there in five days after the letter I received was mailed.

The state of affairs in this State is a little alarming, in consequence of the company being out of funds. I think I shall stop railroading for a while, after I complete my present contract. I shall attend a meeting of the company to-morrow, and know something definite about the prospects of getting my money. They are largely indebted to me already. They owe me about $8,000 now, at this time. If I do not take another contract I shall hire out the negroes to the best advantage I can. Most of the women are worth less than nothing, for they are an expense and no profit. Mary had an abortion some time before I went up to Jackson, and came very near dying; she had all the symtoms of puerperal fever, viz., suspension of the lochial discharge, interruption of the secretion of milk, pulse rarely less than one hundred and twenty in a minute, swelling of the abdomen, &c. Six of the hands are sick to day, but there is not much the matter with them. I have visited several patients in the neighborhood this morning who are quite ill with the congestive fever. I am afraid it is going to be sickly in this country this year. I advised those gentlemen in Jackson who had charge of those negroes you hired what course to pursue with them in order to promote their health. A great many of the women in this country want me to marry them, but times are too hard to marry now. My expenses are enormous. Corn is three dollars for a flour barrel full in the ears. I have six oxen, six mules, three horses, and all these negroes to feed on provisions at their present high prices, but I am making a good deal of clear money notwithstanding the present high prices for every thing. I was astonished to hear of your coming so near me without seeing me. They told me in Jackson that you left in a hurry for fear you should be sick, and I was also informed that you were hippoed considerably.

As regards matters as they stand between you and myself, I received your hands on the seventh or eighth day of November last from

Mills, and have had them ever since, and I consider myself under obligations to pay you the same for them that Mills paid.

Mills has not settled with me yet. If you will take the company's note in settlement I think I can have it settled in that way for you. I have furnished the negroes with clothing, as they needed it. I have their clothes washed for them, and keep them as clean as I can, as cleanliness is promotive of health in this country. In my next I will send you an account of every item in our accounts, as they stand between us. Let me hear something from my old neighbors, your aunt Smith, &c.

Your friend,

JOSEPH T. HICKS.

P. S. Tell Col. Amis he shall hear from me soon, and that Billy wants his wife. I expect you left the country in disgust, finding it in its present embarrassed situation.

J. T. H.

VICKSBURG, *January* 3*d*, 1838.

Mr. DOWNEY.

DR. SIR: Mr. McDonald (the contractor for building the State house) was shot a few days ago without any provocation whatever, and expired in a few minutes after. I shall leave this place in a few days for Natchez. I expect to go to Jackson shortly for the purpose of attending to Col. Amis's, &c., business. Joseph Green applied to me a few days ago for two thousand dollars of your money, without an order from you or directions from you to collect it. I told him the money was in the Planters' bank, ready as soon as the order should be presented for payment. In compliance with your request I send you a copy of an obligation from Willman & Mills, which is as follows:

Know all men by these presents, that we, Willman & Mills, are held and firmly bound unto Samuel S. Downey, in the sum of thirty-six hundred and ten dollars, $3,610; for which payment, well and truly to be made, we do hereby bind ourselves, our heirs, and assigns, firmly by these presents. Sealed with our seals and dated this 6th day of May, A. D. 1836.

The condition of the above obligation is such, that whereas the above bound Willman & Mills have hired the following hands to work on a railroad near Natchez, viz., Lovelace, Peter, Anderson, Billy, Ben, Isahm, Washington, Strephon, Reuben, Lewis, Eddy, Winston, Zed, Fanney, Mary, Tabby, Becky, Sophia, Tamar, Peggy, Dorsey, Anna, Jonah, Jack, and Becky's child, until the 10th day of October next, for the sum of eighteen hundred and five dollars, to be paid in instalments in the following way, viz., seven hundred and twenty-two dollars on the 10th day of July next, seven hundred and twenty-two dollars on the 10th day of September next, and three hundred and sixty-one dollars on the 10th day of October next; and if each instalment is not punctually paid they will carry eight per cent. interest until paid; and the above bound as aforesaid oblige themselves to feed said hands with a plenty of good and wholesome food, put them in good and com-

fortable houses to sleep and stay in when not at work, attend to them when sick, employ physicians when necessary and pay their bills, take care of and treat them humanely, and not work them on the Sabbath day; allow them some reasonable time to wash and mend their clothes, and if said hands lose any time by sickness or otherwise, no discount or deduction is to be made, nor for the expenses of physicians' bills. Then the above obligation to be void and of no effect, otherwise to remain in full force and virtue. W. & M.

Witness—J. T. Hicks. A copy.

Ten hundred and twenty-seven dollars of the above has been paid, ($1027.) I received the hands on the 8th day of November; they owe you ($778) together with the interest on it, and for John's hire and the hire of all your negroes from the 10th day of October until the 8th of November, and interest on that. I shall continue writing to you every opportunity I get until every thing shall be properly understood. I should have given you a statement of our accounts as they stand between us, but I left my account book at Natchez in my trunk. I requested Dr. Hicks to inform you of the death of your little Jack; Old Lewis and Peggy are not yet hired out. They are gaining strength and flesh, but they are not able to work yet.

Your ob't serv't,
JOSEPH T. HICKS.

And the deposition of C. W. Mills, in the words and figures following, to wit:

United States of America,
Southern district of Mississippi, city of Natchez, sct.

Be it remembered, that, on the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and forty-five, before me, Charles A. Lacoste, a commissioner duly appointed on the 31st day of May, A. D. 1842, by the circuit court of the United States, in and for the southern district of Mississippi, according to an act of Congress, "for the more convenient taking of affidavits and bail in civil cases depending in the circuit courts of the United States," passed February 20th, 1812; and an act in addition thereto, passed March 1st, 1817; and "an act to establish the judicial courts of the United States," passed September 24th, 1789, personally appeared Charles H. Mills, a person of sound mind and lawful age, a witness for the plaintiff in a civil suit now depending in the circuit court of the United States, in and for the southern district of Mississippi, wherein Samuel S. Downey is plaintiff, and Benjamin J. Hicks, executor, and Mary M. Hicks, executrix, of Joseph T. Hicks, deceased, are defendants; and said witness being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in said

suit, and being then and there carefully examined, did depose as follows, viz:

"I am acquainted with the plaintiff, not with the defendants. I was acquainted with the late Joseph T. Hicks, one of the firm of Hicks & Arnold.

"On the 6th day of May, 1836, the firm of Wellman & Mills (of which I was a member) having previously taken a contract to grade and bridge a portion of the railroad from Natchez to Washington, in Mississippi, for the Mississippi Railroad Company, hired the following named slaves from Samuel S. Downey, the plaintiff in this suit, to wit. Lovelace, Peter, Anderson, Billy, Ben, Isham, Washington, Strephon, Reuben, Lewis, Eddy, Winston, Zed, Fanny, Mary, Tabby, Becky, Sophia, Tamar, Peggy, Dowsey, Anne, Jonah, Jack, and Becky's child, to work upon said road, from the 10th day of May, 1836, to the 10th day of October, 1836, say five months; for the services of which slaves Wellman & Mills agreed to pay to said Downey, eighteen hundred and five dollars (1805) hire, payable in three instalments as follows, viz: $722 payable on the 10th of July, 1836; $722 payable on the 10th of September, 1836; $361 payable on the 10th October, 1836; each instalment to bear interest at eight per cent. per annum until paid, if not punctually paid when due Wellman & Mills obligated themselves, at their own expense, to provide said slaves with a plenty of good and wholesome food, good and comfortable quarters, medical aid and attention when necessary, but said slaves were to be clothed at the expense of said Downey. No discount was to be allowed Wellman & Mills for time lost by the sickness of the slaves, or any cause interrupting their services.

"Samuel S. Downey departed from Mississippi for North Carolina, where he resided, as I understood, a few days after the 6th of May, 1836, and left the said Joseph T. Hicks, now deceased, behind him at Natchez as his general agent in reference to the matter of the said hire of the said slaves, authorizing said Joseph T. Hicks to collect the moneys due to him (the said Downey) from Wellman & Mills.

"By virtue of said authority said Joseph T. Hicks, at or about the time of the expiration of the time of the hire of the slaves referred to above, agreed with Wellman & Mills to extend the time of hire of all of said slaves up to the 7th of November, 1836, adding another slave, named John, aged about 35 years, to the number above named; said slave, John, being also the property of the said Samuel S. Downey; and the said Joseph T. Hicks received from and receipted to Wellman and Mills, for the said Samuel S. Downey, the following sums of money at the following stated periods, viz:

"On the 7th day of July, 1836, the sum of five hundred and seventy-five dollars, ($575;) on the 14th day of September, 1836, the sum of two hundred dollars, ($200;) on the 7th day of November, 1836, the sum of two hundred and fifty-two dollars, ($252;) on the 23d day of May, 1838, the sum of one thousand and forty-nine $\frac{38}{100}$ dollars, ($1,049 38.) Said payments being all made by Wellman & Mills, on

account of the hire of said slaves, up to the 7th day of November, 1836, and of the interest accrued up to the 23d day of May, 1838, the date of the last payment, which was in full.

"In addition to the above sums of money, Wellman & Mills paid said Joseph T. Hicks, as agent for Samuel S. Downey, the sum of five hundred and seventy-four dollars, ($574,) on the 3d day of June, 1836, on account of the hire of slaves, the property of said Downey, previous to the 10th of May, 1836, and took a receipt for the said last named sum from Joseph T. Hicks for Samuel S. Downey.

"On or about the 7th day of November, 1836, said Joseph T. Hicks, as agent for said Downey, took all the negroes aforesaid, including the slave John, from the possession of Wellman & Mills, who gave them up to him as the agent of said Downey, the time for which they had hired them having expired.

"Subsequent to the 7th day of November, 1836, I heard said Joseph T. Hicks say that he, or the firm of Hicks & Arnold, (of which he was a member,) had the said slaves of Samuel S. Downey employed at the work which he, or the said firm of Hicks & Arnold, had contracted to perform for the said Mississippi Railroad Company. I repeatedly saw portions of said gang of slaves at work upon the said railroad for the said Joseph T. Hicks, or Hicks & Arnold, at different periods, and as late as the fall of 1839. From which facts, and other circumstances, I have no hesitation in saying that it is my impression that the said Joseph T. Hicks, or Hicks & Arnold, had the possession and use of the said slaves belonging to Samuel S. Downey from the 7th of November, 1836, (when Wellman & Mills gave them up as aforesaid,) down to the fall of 1839." C. W. MILLS.

UNITED STATES OF AMERICA,
Southern district of Mississippi, city of Natchez, sct:

I, Charles A. Lacoste, a commissioner duly appointed on the 31st day of May, A. D. 1842, by the circuit court of the United States, for the southern district of Mississippi, according to an act of Congress "for the more convenient taking of affidavits and bail in civil cases depending in the circuit courts of the United States," passed 20th February, 1812; and an act in addition thereto, passed March 1st, 1817; and an act "to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witness lives in the parish of Concordia, State of Louisiana, more than one hundred miles from Jackson, State of Mississippi, the place of the trial of the cause for and in which said deposition is taken and is necessary.

I further certify, that no notification was made out and served on the defendants, or adverse parties' agent or attorney, to be present at the taking of the deposition, and to put interrogatories, if he or they may think fit; and that no notification of the time and place of taking the said deposition was made out and served on said defendants or adverse parties, because neither the said adverse parties, nor any attorney or

agent of said adverse parties, *was*, at the time of taking said deposition, within (100) one hundred miles of the said city of Natchez, the place of taking the said deposition.

I further certify, that, on this twenty-sixth day of April, A. D. 1845, I was attended by the witness, who is of sound mind and lawful age, and the witness was by me carefully examined, and cautioned, and sworn to testify the whole truth; and the deposition was by me reduced to writing in the presence of the witness; and, after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding the same with my own hand to the court for which the same was taken.

I further certify, that I am not of counsel or attorney to either of the parties in said deposition and caption named, or in any way interested in the event of the said civil cause named in the caption.

In testimony whereof I have hereunto set my hand and seal.

C. A. LACOSTE, [SEAL.]
U. S. Commissioner, circuit court U. S., for the southern district of Mississippi.

The defendants then offered to read the deposition of Andrew Arnold, and plaintiff objected to the reading of said deposition, on the ground of interest in the witness; but the objection was overruled by the court, and permitted the said deposition to be read in evidence to the jury, to which the plaintiff excepted; the said deposition as read is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, to wit:

The President of the United States, to A. L. Robinson, esq., an acting justice of the peace, in and for Armstrong county, Penn., at Kittanning, greeting:

Know ye, that trusting to your fidelity and provident circumspection in diligently examining Andrew Arnold in a certain cause now depending in the circuit court of the United States, for the district aforesaid, wherein Samuel S. Downey is plaintiff, and Mary M. Hicks, executrix of Joseph T. Hicks, deceased, defendant; you are requested, at such certain days and places as you shall appoint, to call and cause the said witness to come before you, and him diligently examine on oath, and his examination into the circuit court aforesaid you distinctly and plainly set, together with this writ enclosed, with all convenient speed.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday in November, in the year of our Lord one thousand eight hundred and forty-nine, and in the 73d year of the independence of the United States of America.

[L. S.]

Issued the 14th day of March, 1849.

W. H. BROWN, *Clerk*,
Per CHS. H. ROGERS, *D. C.*

The execution of this commission appears in a certain schedule hereto annexed.

A. L. ROBINSON.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Questions to be asked of Mr. Andrew Arnold, a citizen of the State of Pennsylvania, whose answers thereto are to be read in a suit pending in the circuit court of the United States, for the southern district of Mississippi, wherein Samuel S. Downey is plaintiff, and Mary M. Hicks, executrix of Joseph T. Hicks, [deceased,] is defendant, on the part of the defendant:

1st. Were you present, at any time between the 6th and 10th of January, at a settlement which took place between Dr. John R. Hicks, acting as agent of Samuel S. Downey, and Joseph T. Hicks? If you were, state all you know in regard to their settlement; state particularly what debts were settled, how settled, and how said debts originated.

2d. If any check or checks were paid to said John R. Hicks, as agent for said Downey, please state, if you can, the amount of the same; the bank they were on; who drew them; whether the said bank was then paying specie; and if paying specie, how long it continued to pay specie after said settlement.

3d. State whether you ever had any conversation with Samuel S. Downey in regard to that settlement; and state when that conversation took place; and what said Downey said then in regard to said settlement.

4th. State whether in that conversation, or any other, said Downey said any thing about John Hicks being his agent to collect and receive from Joseph T. Hicks the money he owed him. State what he said on that subject.

5th. State what said Downey has said to you about said Hicks's settlement with said Joseph T. Hicks; and state whether he said any thing about having confirmed that settlement.

6th. Do you know of any indebtedness other than that embraced in the above settlement; or do you know of any other debt due from Hicks and Arnold to said Downey? If so, please state it.

7th. If any indebtedness existed other than that settled as above, state what you know of the transfer by said Hicks and Arnold of all their interest in debts due from the Mississippi Railroad Company to secure said indebtedness, and when said assignment was made.

8th. Was the transfer alluded to in the last question made to secure the debt which was settled by John R. Hicks?

9th. After the assignment or transfer mentioned in the 7th interrogatory, was there any agreement by which Hicks and Arnold agreed to pay the debt, to secure which said assignment was made, if the Mississippi railroad did not pay them?

10th. If there was such agreement, who was present, and when and where was it made?

11th. Was any such agreement made, as you know of, in regard to the check or payment made by Joseph T. Hicks to John R. Hicks, agent, &c., upon the settlement in January, 1839?

12th. Were Messrs. Buckner and Stewart present when the assignment, mentioned in the 7th interrogatory, was made; or were they present when the agreement, mentioned in the 9th interrogatory, was made?

13th. Was any such promise or agreement as this, mentioned in the 9th interrogatory, made in their presence in regard to the check paid to John R. Hicks in January, 1839?

14th. If you know of anything else, please state it.

15th. State whether you have not been sued on the claim for him, [in] Pennsylvania, by S. S. Downey, and whether the case was decided on its merits for or against you.

16th. Are you interested in this case? If you have any release from the executrix of Joseph T. Hicks, please mark it and enclose it.

17th. Examine the release signed by yourself, and herewith exhibited, and state whether you executed it; and, in your answer, mark it, so that it may be identified.

Interrogatories to be propounded to Henry J. Arnold by defendant, whose answers are to be read in the above mentioned cause on the part of the defendant:

1st. Are you acquainted with the plaintiff, Samuel S. Downey?

2d. State if you saw, at any time, Samuel S. Downey and John R. Hicks in the State of Mississippi.

3d. Had you, in the month of March, 1840, or at any other time, any conversation with S. S. Downey about the hire of his negroes in Mississippi, and who was his agent, &c.? If you had any such conversation, please state it, and when and where it did take place.

4th. If you had any conversation with Downey, did he or not speak of the certificate of deposite brought to him by John R. Hicks, and rec'd from Joseph T. Hicks or Hicks and Arnold? If so, state whose property he said it was.

5th. State whether said Downey did not tell you or speak of investing the certificate in cotton; and state, if yea, the reason he did not invest it.

6th. State all that Downey said to you at any time during the year 1840 in relation to said certificate; state it fully.

7th. If you know anything else please state it.

GEO. S. YERGER,
W. A. LAKE.

Cross interrogatories to be propounded to Henry J. Arnold.

1st. How old are you; what relation are you to Andrew Arnold?

2d. If, in answer to the third question, you state that you had a conversation with Samuel S. Downey, please further to state whether you were called upon to notice, and did particularly notice, the whole of

said conversation; whether the same was addressed to you when it occurred; who were present beside yourself; and whether you heard the whole of the conversation that took place upon that occasion; whether you were present at the commencement, and continued present until the end of it.

3d. Where have you resided since the year 1840, and how many conversations have you had with Andrew Arnold about the subject of your examination?

4th. If you state, in answer to 4th question, that Downey told you whose property the certificate was, please also state when that was said, who was present, when and whether or not you heard and now remember, and state the whole of the conversation; and whether it was then explained; when, and under what circumstances, Mr. Downey acquired property in the certificate, and what property he claimed in it, if you say he claimed any.

5th. If Mr. Downey spoke of investing the certificate in cotton, did he then say that Joseph T. Hicks was not responsible to him for the amount or for his negro hire?

6th. Have you stated anything which is not of your own knowledge, but which you merely heard from others? If you have, point out such statement.

Cross questions for Andrew Arnold.

1st. When John R. Hicks came to Mississippi in 1839, did he not bring a letter from Mr. Downey to Joseph T. Hicks, and show that letter before any business was transacted between them, in which Mr. Downey was interested?

2d. How was the account between Downey and Hicks made up; did not Joseph T. Hicks furnish the items about which John R. Hicks knew nothing, but which he took from what Joseph T. Hicks said merely; and did he (John R. Hicks) not expressly leave the amount to be finally adjusted between Messrs. Downey and Hicks upon some future occasion?

3d. In making the settlement, if you say there was a settlement, did John R. Hicks have the contract for negro hire, or a copy or memorandum thereof; did you know at that time that there was a special contract between Downey and Joseph T. Hicks, and the contents of said contract?

4th. Was it expected, believed, or intended, that the check, if you say one was given to John R. Hicks, should or should not be paid on presentment at the bank; had Joseph T. Hicks, or Hicks and Arnold, that amount of cash in the bank; if so, where deposited, and by whom, and what means; was there not some expectation, understanding, or arrangement, that the check would or was to be arranged by the certificate of deposite, payable at a future day; did not Joseph T. Hicks go with John R. Hicks to Natchez to carry out that arrangement; if he did not go with that view, with what view did he accompany his brother; did you ever know of the bank paying as much specie at one

time as $17,000, and what was the largest sum you ever knew the railroad bank at Natchez to pay at one time, and when; how much did you know of the railroad bank paying from 10th January, 1839, at any one time, and in all put together?

5th. Did not the railroad bank owe Hicks and Arnold, and was not the check and certificate of deposite merely a transfer, or mode of transferring so much of said debt to said Downey on account of the debt due by said Joseph T. Hicks to Downey?

6th. Were you present at all conversations between Joseph T. Hicks and John R. Hicks, from the time John R. Hicks arrived until he and his brother left to go to Natchez together; did not you or Joseph T. Hicks know, believe, or suspect, that a check for so large an amount would not be paid; and was it not drawn, if drawn at all, under such belief, knowledge, or suspicion; and with the belief, knowledge, or suspicion, and with the belief, knowledge, or hope, that it would be and was to be arranged by a certificate of deposite?

7th. Did Downey say that John R. Hicks was his agent generally, or only his agent to receive money from Joseph T. Hicks?

8th. Did you, or Hicks and Arnold, ever recover the debt due you by the bank, and when?

9th. When John R. Hicks came out about the 10th of January, 1839; did he have or exhibit any papers, other than the letter from Downey to Hicks concerning the accounts between Hicks and Downey; and were any such papers shown or examined before the check or certificate was received; were not all the papers that were produced, if any other than the letter, produced by Joseph T. Hicks, and what were they; if John R. Hicks made out any account, or made any entries, did he make such account or entries from statements made by Joseph T. Hicks, or memoranda furnish by him; or on what evidence or grounds did he make out such account or entries?

10th. When did you first learn or hear that S. S. Downey insisted upon Joseph T. Hicks making good to him the amount of the certificate of deposite; did you not hear of that as early as the fall of 1840, or when?

11th. Did you know the amount due 10th January, 1839, by Joseph T. Hicks to S. S. Downey, or could you have stated an account showing the amount due, and how would you have stated it; did John R. Hicks know more about this matter than you did, and how did he acquire such knowledge?

12th. On an average, how much did the hands hired from Downey make from the contracts with the railroad, in the debt due by the road; how much did men earn per day, as near as you can state it?

13th. If Downey said any thing about a settlement, did the conversation refer to a settlement of accounts in full between him and Hicks, or mainly or entirely to the receipt of the certificate of deposite on account of the debt?

14th. When did your partnership with Joseph T. Hicks commence?

15th. Did you not hire Downey's negroes before that time?

16th. Did John R. Hicks give any receipt for the certificate; if so, do you know where it is? And furnish a copy thereof.

17th. In answering the 15th interrogatory, you will please state all the evidence on the trial, by whom given, the arguments of counsel, and the instructions of the court, and for what the suit was brought, if you answer that interrogatory that the suit was decided in your favor.

18th. At the time John R. Hicks took the certificate of deposite on the check, was anything said about who was to take the risk of the solvency of the bank, and what was said on that subject; was any special contract made about that; was not the check or certificate given as good and solvent?

19th. Which of the two, Downey or Joseph T. Hicks, had the best opportunity for becoming acquainted with the condition of the railroad bank, and state where Downey was 1836 to 1840, and where Hicks, and how employed.

20th. What hire, per day, did the railroad agree to pay for the negroes to you and Hicks, from 1st January, 1840?

21st. What amount was due you and Hicks by the bank, about the 1st of November, 1839, and have you ever collected that debt?

22d. Do you or not know that Joseph T. Hicks received letters from S. S. Downey during the year 1839, did you ever see any such letters, or hear him say he had received any, and how many?

23d. At your first acquaintance with Joseph T. Hicks, was he possessed of any property or capital, and what and how much property did he have at his death?

24th. Have you stated anything not within your own knowledge but which you heard from others; if so, point out such matters particularly.

MASON & BURWELL.

Let commission issue upon these interrogatories and cross interrogatories without further notice; the commission to be filled up hereafter with the name of the commissioner. We reserve only objections to the competency of the testimony.

MASON & BURWELL.

February 27th, 1849.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Circuit court, U. S.

I, William H. Brown, clerk of said court, do hereby certify, that the foregoing interrogatories and cross interrogatories are truly copied from the originals on file in the case therein named in my office.

Given under my hand and seal of said court, at Jackson, this 14th day of March, 1849.

[L. S.]

W. H. BROWN, *Cl'k*,
Per CHAS. H. ROGERS, *D. C.*

Pursuant to the annexed commission, to me directed from the circuit

court of the United States, for the southern district of Mississippi, directing and empowering me to take the deposition of Andrew Arnold, to be read in evidence on the trial of a suit pending in said court, wherein Samuel S. Downey is plaintiff, and Mary M. Hicks, executrix of Joseph T. Hicks, deceased, defendant. I, the undersigned, one of the justices of the peace in and for the county of Armstrong, in the State of Pennsylvania, have caused the said Andrew Arnold to come before me, in my office, in Kittanning county aforesaid, on Wednesday, the 4th day of April, 1849; and the said Andrew Arnold being of full age, was first duly sworn by me to depose the truth, the whole truth, and nothing but the truth, in the premises; and so qualified by me, he deposeth and saith:

To the 1st interrogatory of defendants I answer:

I was present at a settlement which took place between the 1st and tenth of January, eighteen hundred and thirty-nine, between Dr. John R. Hicks, acting as the agent of Samuel S. Downey and Joseph Amis; John R. Hicks, at the time above mentioned, came to Joseph T. Hicks and Arnold's contract on the Mississippi railroad, about twenty miles from Natchez; the said J. T. Hicks and John R. Hicks, as the agent of Samuel S. Downey and Joseph Amis, there made a settlement in my presence, of the whole of the negro hire of Samuel S. Downey, Joseph Amis, and John R. Hicks' own negroes, from the year 1836 up to that time; and the balance due S. S. Downey at that time from J. T. Hicks, amounted to upwards of nine thousand dollars. At that [time] the Mississippi Railroad Company and Mississippi Railroad Bank, at Natchez, were indebted to J. T. Hicks and myself, I think, not less than twenty thousand dollars, and after the settlement was made, J. T. Hicks and John R. Hicks went away together. The whole of the negro hire at that time amounted above sixteen thousand dollars, and the said J. T. Hicks charged himself in the books of Hicks & Arnold with the amount.

To the 2d interrogatory of defendants I answer:

At the time of the settlement in January, 1839, referred to, Joseph T. Hicks drew a check or checks on the Mississippi Railroad Bank at Natchez, for the whole balance of negro hire due from J. T. Hicks to S. S. Downey, Joseph Amis, and John R. Hicks, which amounted to about seventeen thousand dollars; there might have been separate checks for the amount due to each of the gentlemen, or the whole may have been included in one, and they took the check or checks with them when he and John R. Hicks went to Natchez to draw the money out of bank to pay the amount of said negro hire; the Mississippi Railroad Bank at that time, and for some considerable time afterwards, was paying specie on all demands made upon it, so far as I know; and in a few days afterwards J. T. Hicks and John R. Hicks returned from Natchez.

On the first of November, 1839, the notes of the bank were at a discount of about ten per cent. in Natchez.

The notes declined gradually, and on the 16th of November, 1839,

I purchased three drafts of one thousand dollars each, of I think Bennett & Co., of Natchez, on some house in New York, at a discount of sixteen per cent., and could have negotiated twenty thousand dollars at the same time; and if I had had the certificates of deposite or the control of them for the money left in the hands of the bank on the 1st of November, 1839, I could have secured them at a discount of not more than 10 per cent. for eastern funds, which at that time were at a premium of from three to four per cent.; but I never had control of the funds, nor had J. T. Hicks any control of the funds to my knowledge.

Samuel S. Downey never called on the bank for his money until some time in the last of February, or first of March, 1840, when he came out to receive his negroes, as he told me at that time.

To the 3, 4, and 5 interrogatories of the defendants I answer:

Some time in the last of February, or the first of March, 1840, Samuel S. Downey and John R. Hicks came to Hicks and Arnold's residence, in Washington, Mississippi, where we were at work for the Mississippi Railroad Company by the day, when I had a conversation with Samuel S. Downey respecting the settlement which John R. Hicks, or his agent, had made with J. T. Hicks in January, 1839, above referred to; Samuel S. Downey then told me that he had sent out negroes from North Carolina to Mississippi, in 1836, in the care of Joseph T. Hicks, as his agent, to do the best he could with them, as he had understood wages were good in Mississippi; and as he could not come out himself to settle with Joseph T. Hicks, he had appointed John R. Hicks his agent, to settle with Joseph T. Hicks for the whole of Joseph T. Hicks's agency of his negroes to the time said settlement was made by John R. Hicks, and to receive the pay; and that he was well pleased with Joseph T. Hicks, as he had rendered an honest account of everything, and he was satisfied with the settlemant which John R. Hicks, as his agent had made with the said Joseph T. Hicks, but that he was not satisfied with John R. Hicks for leaving the money on deposite in the bank, and that he ought to have drawn it at the time when it might have been got. Samuel S. Downey said if the money had been lost under the arrangement of Joseph T. Hicks, he would never have complained, as J. T. Hicks was his agent, and he had not time to come out himself, and settle with him, or he would have got his money when the bank was good. Afterwards, in another conversation which I had in Natchez with said Downey about the middle of March, 1840, the day before he left for home, Samuel S. Downey repeated the same in substance to me which he had done in our conversation at Washington.

To the 6th interrogatory of defendants I answer:

I know of no indebtedness by J. T. Hicks to Samuel S. Downey other than that which John R. Hicks settled with J. T. Hicks, on or about the tenth of January, 1839. About the 1st of January, 1839, Hicks and Arnold became indebted to Samuel S. Downey, John R. Hicks, and Joseph Amis, for negro hire, commencing about the 1st of

January, 1839, and ending about the 1st of October, 1840, for the following bonds: to Samuel S. Downey, four thousand eight hundred dollars, by bond dated the 1st of January, 1839, payable 1st of January, 1840; also two thousand and fifty-eight dollars, by bond dated 6th March, 1840, payable 9th of October, 1840; also four hundred and fifty dollars, by bond dated the 1st of March, 1840; which last mentioned bond was to be paid in such funds as Hicks and Arnold might receive from the Mississippi Railroad Company, and was never to be paid if said funds *was* never received by them; which said funds has never been received to my knowledge.

To Joseph Amis, two thousand two hundred and fifty dollars, by bond dated 1st of January, 1839, payable 1st of May, 1840; also eight hundred and twelve dollars, by bond dated 6th March, 1840, payable 9th of October, 1840; also a small bond to be paid in the same manner as the last mentioned to S. S. Downey; to John R. Hicks three thousand dollars, by bond dated 6th March, 1840, payable 9th October, 1840; also a small bond to be paid in the same manner as the last mentioned bond to S. S. Downey; which last mentioned bonds to Joseph Amis and John R. Hicks, being the three small bonds mentioned, which were never to be paid if the funds in which they were payable was never received, which funds never *has* been received to my knowledge.

The aforesaid indebtedness did not accrue till after the settlement which John R. Hicks, Downey's agent, had made with J. T. Hicks, Downey's former agent, for which the check or checks were given.

The bonds referred to above were given after the settlement referred to, but the three of them which were dated on or about the 1st of January, 1839, were not dated so as to bear at the time they were delivered, but were antedated, so as to bear date a few days before their delivery, and a few days before the check or checks *was* given.

To the 7th interrogatory of defendants I answer:

That no indebtedness did exist, other than that mentioned in my answer to the 6th interrogatory, to secure the payment of the foregoing bonds mentioned in my answer to the 6th interrogatory. On the 11th of March, 1840, at the office of Buckner, Barrow & Stewart, in Natchez, Hicks and Arnold transferred to Joseph Amis and John R. Hicks, as collateral security for the payment of the said several sums of money mentioned in my answer to the 6th interrogatory, about ten thousand dollars, which was placed to our credit on the books of the Mississippi Railroad Bank; and at the same time Hicks and Arnold, or myself, also transferred to the said Downey, Amis, and John R. Hicks, as collateral security for the payment of said debts mentioned in my answer to the 6th interrogatory, a claim Arnold, or Hicks and Arnold, had against the Mississippi Railroad Company, amounting to about eleven thousand dollars, which had not yet been transferred to the books of the bank, in all making about twenty-one thousand dollars; these transfers were not made as absolute payment, but as collateral security for the pay-

ment of the said bonds mentioned in my answer to the 6th interrogatory; and if the money could not be realized out of these two funds, we considered ourselves at the time bound to pay them, except the three small bonds, one of $226 56, another [of] $450 00, the amount of the other not recollected; which small bonds were not to be paid if the money could not be realized off the railroad company.

To the 8th interrogatory of defendants I answer:

The transfer, mentioned in the 7th interrogatory answer, were not made to secure the debt which was settled by John R. Hicks with Joseph T. Hicks about the 1st of January, 1839, but was made to secure the bonds mentioned in my answer to the 6th interrogatory.

To the 9th interrogatory of defendants I answer:

That after the assignment or tranfers mentioned or referred to in my answer to the 7th interrogatory, Joseph T. Hicks and myself did agree to pay the debt for which the assignment as collateral security was made, as mentioned in my answers to the 6th and 7th interrogatories of the defendants, if the Mississippi Railroad Bank and Company failed to pay it, except the three small bonds, which were never to be paid, unless realized from the railroad company.

To the 10th interrogatory of defendants I answer:

There was such an agreement, and there was present at the time this agreement was made, Buckner & Stewart, David Corderey, John R. Hicks, Samuel S. Downey, Joseph T. Hicks, and I believe Mr. Barrow; I believe the agreement was made on the 11th of March, 1840, and in the office of Buckner, Barrow & Stewart, in the city of Natchez.

To the 11th interrogatory of defendants I answer:

There never was any agreement made by Hicks and Arnold, nor Joseph T. Hicks, in my presence, to guarantee or pay the check or checks which was given to Joseph R. Hicks, as agent for S. S. Downey, by J. T. Hicks on the settlement in January, 1839, nor any other time in my presence, nor ever was it claimed that I heard of, until I heard S. S. Downey had brought suit against J. T. Hicks's estate.

To the 12th interrogatory of defendants I answer:

Messrs. Buckner & Stewart were present, and when the assignment was made, which is referred to in my answers in the 7th and 9th interrogatories, and it was drawn by Mr. Buckner.

To the 13th interrogatory of defendants I answer:

That there was not any such promise or agreement, as mentioned in the 9th interrogatory, made in the presence of Messrs. Buckner & Stewart, nor in the presence of any other person, in regard to the check or checks paid John R. Hicks in January, 1839, nor was it spoken of to my knowledge; I always considered that the debt was fully paid by J. T. Hicks at the time of the settlement in January, 1839, nor did I ever consider myself responsible for that debt, either individually or as a partner of the firm of Hicks & Arnold.

To the 14th interrogatory of defendants I answer:

Shortly before the aforesaid assignment of the eleventh of March,

1840, Samuel S. Downey, Joseph T. Hicks, and myself, were at the Mississippi Railroad Bank at Natchez, *were* we had a considerable conversation with Eli Montgomery, who was the president of said bank, trying to make some arrangement with the bank to pay the claims which Hicks and Arnold had against the bank and railroad company, and which we wanted to transfer to S. S. Downey, Joseph Amis and John R. Hicks, on the 11th of March, 1840, as collateral security for payment of said bonds mentioned in my answer to 6th and 7th interrogatories, in order to release our liability to pay said bonds. Joseph T. Hicks and myself, in the presence of S. S. Downey, requested Eli Montgomery to have one claim, of about eleven thousand dollars, against the Mississippi Railroad Company, which we wanted transferred to the books of the Mississippi Railroad Bank, and placed to the credit of Joseph Amis, S. S. Downey, and John R. Hicks, to whom we wanted to transfer it as collateral security, as above stated; which Eli Montgomery agreed *to* at that time to have done, but the next day or two refused to do it. Hicks and Arnold told Eli Montgomery, at that time, we wanted the transfer made to enable Joseph Amis, John R. Hicks, and S. S. Downey to collect the money and release Hicks and Arnold from the payment of those bonds, which we were bound to pay if they could not collect the claims transferred to them off the Mississippi Railroad Bank and Railroad Company, except the three small bonds for negro hire in 1840; and we were very anxious to have this transfer made by Eli Montgomery, as our attorneys had instructed us to have it done, in order to enable the said Downey, Hicks, and Amis to bring a suit against said bank in the United States court; but no arrangement was made at that time, or any other time, by J. T. Hicks and myself, or attempted to be made by Hicks and Arnold, or either of us, in my presence, in the presence of Eli Montgomery, or S. S. Downey, in relation to the checks which Joseph T. Hicks had paid to John R. Hicks at the time of the settlement in January, 1839, which has been referred to for payment of the debt for which it was given; nor did Hicks and Arnold, or either of us, in my presence, at that time, or any other time, ever state that we considered ourselves liable for the payment of the check or the certificate held by Mr. Downey, if the said check or certificate was not paid by the bank; nor did I consider myself liable for either the debt or checks. About this fact I cannot be mistaken, and such an admission, made in my presence, could not have escaped my notice. During the above conversation, Downey was always present.

In May or June, 1828, Joseph T. Hicks and myself first became partners, for the first time in contract, on the Mississippi railroad; Joseph T. Hicks had at that time under his control about forty negroes. Joseph T. Hicks, who made a calculation of the amount of the negro hire up to the first of January, 1839, and he was paid by entering a credit to him on the books of Hicks and Arnold for the amount. Some time in the winter of 1841, I think the month of January, S. S. Downey came to Kittanning, in Pennsylvania, where I resided, and told

me that he had come to collect of me the note or bond for $4,800 00, dated 1st of January, 1839, and due 1st of January, 1840. I asked him if J. T. Hicks had paid him the bond due Joseph Amis for $812, dated 6th March, 1840, and his own bond for $2,058, dated 6th of March, 1840, and due 9th October, 1840? S. S. Downey told me that Joseph T. Hicks had paid him every cent of those two late bonds. The reason I asked the question was, because I had left my part of those debts in Joseph T. Hicks' hands, to discharge those bonds. I then asked said Downey, in presence of H. N. Lee, esq., of Kittanning, if he had any other claims against Hicks and Arnold, or myself, than the said bond of $4,800? Said Downey replied that he had no other claim against Hicks and Arnold, or either of them, than the said bond of $4,800, and the small bond of $450 for negro hire in 1840; and that he did not care anything about the small bond or note if he never got it, but he would make me pay the amount of the $4,800 bond; he brought suit on the bond in Pittsburg; I paid S. S. Downey's att'y the full amount of the $4,800 bond, dated 1st Jan'y, 1839. The note of about $450 was given for negro hire from the 1st January, 1840, to some time in March, 1840; Hicks & Arnold hired some negroes from J. R. Hicks, as the agent of Samuel S. Downey, for the year ending 1st of January, 1840; at the expiration of the year no person came to receive them; Hicks & Arnold had finished their contract and moved into Natchez with all our negroes, and as no person came to receive the negroes in January, 1840, they would have been an expense to their owners had we not employed them. The Mississippi Railroad Company agreed that we might employ the negroes on the railroad, by the day, in repairing the railroad; we did so, and employed some of S. S. Downey's negroes among the rest, and worked them by the day on said road from the 1st of January, 1840, to some time in March following; a few days before we quit work, John R. Hicks and S. S. Downey came to Natchez, and S. S. Downey said that he was well pleased that we had employed his negroes, and kept them off expense; at this time the funds of the Mississippi Railroad Bank had depreciated very considerably, and Joseph T. Hicks and myself told S. S. Downey that we could not pay him good funds for the hire of his negroes while they were working on the railroad by the day; Downey said he was well pleased with what we had done, and that he would take the same kind of funds in pay for the negro hire for that time that Hicks and Arnold might get from the railroad company; and he agreed to wait for his pay until it should be collected off the railroad company; which has never been done, although suits have been brought for that purpose.

To the 15th interrogatory of defendants I answer: I have been sued by S. S. Downey in the western district court of the U. S., for Pennsylvania, and the cause was decided, on its merits, in my favor; the plaintiff's claim was for the check, or checks, or certificate of deposite as aforesaid.

To the 16th interrogatory of defendants I answer: I am not inter-

ested in this case; I have a release from Mary M. Hicks, the surviving executrix of Joseph T. Hicks, dec'd, which is marked with the letter A, and which is hereto attached.

To the 17th interrogatory of defendants I answer: I have examined the release executed by me to the defendants in this case, and which is marked B, and is hereto attached; and was executed before giving my testimony in this case.

To the 1st cross interrogatory of the plaintiff I answer: When John R. Hicks came to the residence of Hicks and Arnold, on the contract, about twenty miles from Natchez, about the first of January, 1839, John R. Hicks told Joseph T. Hicks that he had full authority from S. S. Downey and Joseph Amis to make a settlement with him for all his, Joseph T. Hick's, agency for S. S. Downey and Joseph Amis's negroes, from the time he had come into Mississippi with the negroes up to that time; J. R. Hicks showed J. T. Hicks some letters or papers, which seemed to satisfy Joseph T. Hicks that the said John R. Hicks had the authority to settle the negro hire; the number of papers he showed I am not able to say; I believe I never read them; but that the papers or papers were showed before they went into a settlement.

To the 2d cross interrogatory of the plaintiff I answer:

Joseph T. Hicks brought the agency books in which he had kept the account of S. S. Downey, John R. Hicks, and Joseph Amis, respecting the hire of their negroes, and laid them on the table; to the best of my recollection John R. Hicks sat down and cast up the accounts and made out the balance between them, amounting to about seventeen thousand dollars, for which a check or checks were given; there were no other books or accounts brought there on that settlement, to the best of my knowledge, and the settlement was final and conclusive, and nothing said about leaving the matter open for a future settlement with Downey, and as I understood everything was settled satisfactory.

To the 3d cross interrogatory of plaintiff I answer:

There was a settlement between the parties mentioned above; I cannot recollect of John R. Hicks having any contract for negro hire, or copies or memorandum of the same at the time of said settlement; I know of no special contract between Downey and Joseph T. Hicks at that time.

To the 4th cross interrogatory of plaintiff I answer:

A check or checks were given to John R. Hicks, and it was expected and believed, and intended, that the same would be paid on presentment at the bank; Hicks and Arnold had the amount of cash referred to in said bank, and more; they had at that time at least twenty thousand dollars on deposite and on the books of the railroad company; the amount on the books of the company was transferable to the bank at the time, and could be transferred at any time when called on, as Hicks and Arnold commenced leaving such portions of their estimates back with said railroad company as they did not need to carry on their business, in July or August, 1838, and continued leaving the same un-

til the fall of 1839; I don't recollect when Hicks and Arnold commenced making their deposites in the bank; the railroad and banking business was generally attended to by J. T. Hicks; when the check or checks [were drawn] there was no understanding, expectations, or arrangements that the check or checks were to be arranged by a certificate of deposite, or payable at a future day, but I believed the same would be paid when presented; Joseph T. Hicks did go with his brother, John R. Hicks, to Natchez, not to carry out any arrangement, but merely to accompany him, and I believe it was with that view he went. I never did know the bank to pay at one time $17,000 of specie, nor do I know the largest amount the Mississippi Railroad Bank paid at any one time, nor when; nor do I know how much the bank paid from the 10th of January, 1839, at any one time, nor how much altogether; but I do know that at that time the railroad bank paid Hicks and Arnold all they called on, and never knew it refuse to pay any person at the counter at that time.

To the 5th interrogatory of the plaintiff I answer:

The railroad bank and railroad company owed Hicks and Arnold the above $17,000, and I believe $20,000, about the 10th of January, 1839; the check or checks, to the best of my knowledge, were not to be transferred in any way, but to be paid when presented.

To the 6th cross interrogatory of plaintiff I answer:

Joseph T. Hicks and his brother, John R. Hicks, commenced to settle shortly after dark; I was sitting in the room where they were settling; they finished their settlement about common bed time; I was in their hearing during all the time they were settling till they finished, and I was generally in their company after the settlement till they started for Natchez next morning, after breakfast; the check or checks *was* not given under any arrangement, but to be paid, and I believed the same would be paid, when presented, to the best of my recollection.

To the 7th cross interrogatory of the plaintiff I answer:

S. S. Downey told me on several occasions that he had appointed John R. Hicks his agent to settle all his business with Joseph T. Hicks, his former agent.

To the 8th cross interrogatory of the plaintiff I answer:

Hicks and Arnold, nor myself, never rec'd the debt due from the bank on account of insolvency of said bank.

To the 9th cross interrogatory of the plaintiff I answer:

I have given a full answer to this interrogatory in my answer to the 2d cross interrogatory of the plaintiff.

To the 10th cross interrogatory of the plaintiff I answer:

The first time I heard of S. S. Downey insisting upon Joseph T. Hicks to make good the amount of the certificate, was after the said Downey had brought suit against Joseph T. Hicks, or his estate in Mississippi, to recover the amount of said certificate; this I heard by letter from Benjamin J. Hicks, which suit was commenced, to the best of my knowledge, one or two years after the fall of 1840.

To the 11th cross interrogatory of the plaintiff I answer:

I believe the amount due, about the 10th of January, 1839, from Joseph T. Hicks to S. S. Downey, was about $9,000, for the hire of his negroes, which was included in the check or checks of about $17,000. If I had the books containing the account, I believe I could have stated it correctly; I cannot tell what John R. Hicks *new* about the matter, nor how he got his knowledge.

To the 12th cross interrogatory of the plaintiff I answer:

As I have not access to the books, which are in Mississippi, I cannot state the average price of each or any of the hands hired from S. S. Downey, nor the price per day men got at that precise time.

To the 13th cross interrogatory of the plaintiff I answer:

S. S. Downey spoke in my presence several times, and I understood from him that the settlement between John R. Hicks and Joseph T. Hicks was in full of all Joseph T. Hicks' agency for said Downey.

To the 14th cross interrogatory of the plaintiff I answer:

My partnership with Joseph T. Hicks commenced some time in May or June, 1838, to the best of my recollection.

To the 15th cross interrogatory of the plaintiff I answer:

Arnold, Dickey & Co., hired some negroes from Joseph T. Hicks in the fall of 1837, and worked them until some time in the spring of 1838, before Hicks and Arnold entered into partnership, and I believe Downey owned some of them; I understood so afterwards.

To the 16th cross interrogatory of the plaintiff I answer:

John R. Hicks did give Joseph a receipt for the certificate which John R. Hicks said he took from the railroad bank, for a deposite he made there for Downey to pay said debt; all the knowledge I have of what became of said receipt is from the depositions of Benjamin J. Hicks, Mr. Yerger, who testified that the said receipt was burned in said Yerger's office, in Vicksburg; they sent me a copy of said receipt, with their depositions, all of which are filed in the circuit court of the U. S., for the western district of Pennsylvana, for which reason I cannot send a copy.

To the 17th cross interrogatory of the plaintiff I answer in the 15th cross interrogatory of plaintiff:

And further state, I am unable to give you all the evidence in the case referred to, but will give some of the evidence, the argument of the counsel, and charge of the court, to the best of my recollection; the deposition of Capt. David Corderey, went to shew that I owed S. S. Downey nothing at the time of said trial; the evidence of John R. Hicks and others shewed near about the same.

The argument of Downey's counsel was, that I owed Downey the amount the suit was brought for to recover; my counsel did not argue the case at all, and the court charged the jury in my favor; the suit was brought to recover a claim for negro hire, and the amount of the certificate of deposite in this case now pending.

To the 18th interrogatory of the plaintiff I answer:

When the check or checks were given, there was nothing said about the solvency of the bank, nor was there any special contract made about

any risk in my presence; I believe the check or checks *was* given as good and solvent; I was not present when John R. Hicks made the deposite and took the certificate, but John R. Hicks told me a few days after that he had made a deposite for Downey, and took a certificate for the same.

To the 19th interrogatory of the plaintiff I answer:

I believe Joseph T. Hicks had a better opportunity of becoming acquainted with the condition of the bank than S. S. Downey had; I never saw S. S. Downey before the spring of 1840; to the best of my knowledge, Joseph T. Hicks was in the neighborhood of Natchez from 1836, till 1840.

To the 20th cross interrogatory of the plaintiff I answer:

The railroad company agreed to pay one dollar per day for able men, and 75 cents for women and boys, to the best of my knowledge; owing to sickness among the hands, a number of them were not worked in the winter, and some of Downey's hands were among that number; I now speak of the hands hired from the 1st of January 1840, to some time in March, 1840; and from the best of my recollection.

To the 21st cross interrogatory of the plaintiff I answer:

I think about November, 1839, the bank and railroad company might have owed Hicks and Arnold from thirty to thirty-five thousand dollars, and we reduced that account to about twenty-one thousand dollars from the first of November to some time in February, 1840, at a discount of from ten to sixteen per cent; which twenty-one thousand dollars, with interest, is yet unpaid.

To the 22d cross interrogatory of the plaintiff I answer:

I know of Joseph T. Hicks having received two or three letters from S. S. Downey during the year 1839; he, Joseph T. Hicks told me so; I have no recollection of ever having read any of them.

To the 23d cross interrogatory of the plaintiff I answer:

At my first acquaintance with Joseph T. Hicks I cannot state how much property he had, but in the spring of 1838, when he and I entered into partnership, Joseph T. Hicks claimed a family of negroes he said he inherited from his father's estate, in all 6 or 7; also had three or four thousand dollars in money; in the fall of 1840, when I left Mississippi, I considered J. T. Hicks worth about twenty or thirty-five thousand dollars after the payment of all his debts, which I had any knowledge of.

To the 24th cross interrogatory of the plaintiff I answer:

The sources from which I received my information, as to any statements set forth in the foregoing interrogatories and cross interrogatories, which was not within my own knowledge, are specifically set forth in my answers to the respective interrogatories.

ANDREW ARNOLD.

A. ROBINSON, *Commissioner*.

I, the undersigned commissioner, certify, that the above deposition of Andrew Arnold was sworn to and subscribed in my presence, it having

been first carefully read over to the said witness, by whom it was well understood and approved; all which was done in my presence, at the time and place stated in the caption hereof; and the whole of it, save only the signature of the witness, is in the handwriting of the said commissioner. The undersigned doth further certify, that he is not of kin to either party; that he has no legal interest in the suit, nor is in anywise interested therein. The undersigned doth further certify, that after the same [was] sworn to and subscribed, he caused it to be sealed up, without being in anywise altered, and addressed it to the clerk of the proper court; the whole of [the] address, &c., being also in the proper handwriting of the undersigned.

Witness my hand and seal at Kittanning, Armstrong county, Pennsylvania, this 7th day of April, 1840.

A. ROBINSON, [L. S.]
Acting justice of the peace.

Copy of releases attached to said deposition.

Know all men by these presents, that I, Mary M. Hicks, surviving executrix of the last will and testament of Joseph T. Hicks, deceased, for and in consideration of the sum of ten dollars, and divers other good causes and considerations me thereunto moving, do hereby release to Andrew Arnold, a partner in the late firm of Hicks & Arnold, all demands of every kind and description which I have, or may have, against said Arnold for contribution, on account of every indebtedness, or supposed indebtedness, of the late firm of Hicks and Arnold to S. S. Downey, or for or on an account of any indebtedness of said firm to any other person or persons; it being my intention to release, and I do hereby release, said Arnold from all claims, demands, or suits, of every kind and description, or for contribution on account of any indebtedness of said firm to any person or persons whatever, and from all demands I now have, or may hereafter have, as executrix of said Joseph T. Hicks, deceased, whether originating in said Downey's claim, or any other; hereby fully releasing and discharging him from all claims and demands whatever.

Witness my hand and seal this 2d March, 1849.

MARY M. HICKS, [SEAL.]
Surviving executrix of the last will and testament of Joseph T. Hicks, deceased; marked A.

Witness—
JOHN COWAN.

Know all men by these presents, that I, Andrew Arnold, for and in consideration of the sum of one dollar, to me in hand paid, and for divers other good considerations me thereunto moving, do hereby release to Mary M. Hicks, surviving executrix of the last will and testament of Joseph T. Hicks, deceased, all demands of every kind and description which I have, or may have, against her as executrix of

Joseph T. Hicks, deceased, in her representative character, for contribution on account of any indebtedness, or supposed indebtedness, of the late firm of Hicks & Arnold (of which firm the said Joseph T. Hicks and the undersigned were partners) to S. S. Downey, or for or on account of any contribution or indebtedness of said firm to any other person or persons; it being my intention to release, and I do hereby release, said executrix, and the estate of Joseph T. Hicks, deceased, from all claims, demands, and suits, of every kind and description, which I have, or may have, against the said executrix of Joseph T. Hicks, deceased, in her representative character, or against the estate of the said deceased, whether originating in said Downey's claim, or any claim whatever, hereby fully releasing and discharging the [said] Mary M. Hicks, executrix as aforesaid, in her representative character as aforesaid, and the estate of the said Joseph T. Hicks, from all demands, payments, and claims, whether for contribution or otherwise, which I have, or may have, against the estate of said Joseph T. Hicks, deceased.

In witness whereof I have hereunto set my hand and seal, this 4th day of March, A. D. one thousand eight hundred and forty-nine.

ANDREW ARNOLD. [L. S.]

Witness—A. ROBINSON. Marked B.

The defendants then read two depositions of John R. Hicks, which are in the words and figures following, to wit:

STATE OF NORTH CAROLINA,
Granville county.

Be it remembered, that, on this the 24th day of September, in the year of our Lord one thousand eight hundred and forty-five, before me, Lunsford A. Paschall, presiding justice of the court of pleas and quarter sessions for the county of Granville, and State of North Carolina aforesaid, under and by virtue of an act of Congress, entitled an act to establish the judicial courts of the United States, personally appeared Dpct. John R. Hicks and Abraham W. Venable, witnesses of lawful age, for and on behalf of the defendants, in a certain civil cause depending in the circuit court of the United States, for the southern district of Mississippi, holden in Jackson, wherein Samuel S. Downey is plaintiff, and Benjamin J. Hicks, executor, and Mary M. Hicks is executrix, of Joseph T. Hicks, deceased, are defendants; and the said witnesses being by me first carefully examined, and sworn to testify the whole truth, makes oath, depose, and say, that they reside in Granville county, State of North Carolina, more than one hundred miles from the city of Jackson aforesaid, the place of trial of this cause. Furthermore they say:

Abraham W. Venable, being first duly sworn, deposeth and saith as follows:

Question by the defendants. Were you present when Samuel S. Downey deposited a certificate of deposite in the Clarksville bank? If so, state what certificate it was, what bank in Mississippi it [was] issued by, and the amount of said certificate, and in whose favor it was issued.

Answer. I was president of the branch of the Exchange Bank of Virginia at Clarksville from the year 1838 to some time in 1841 or 1842. During that time Samuel S. Downey presented a certificate of deposite on a bank of Mississippi, I think the Railroad Bank of Natchez, as well as I recollect, to the officers of the bank; the amount was large, but not at this time recollected. Mr. Downey asked whether the bank would cash the said certificate; to which I replied, that if he would endorse it, it would be done, but which he declined to do. As well as my recollection serves, the certificate was in his favor, and was by him deposited in the bank until he withdrew it. I suppose the deposite was for safekeeping, as it was the habit of the bank to receive such papers from customers for that purpose.

Question by same. Did Samuel S. Downey claim said certificate as his own property; did he ask a premium for it? In a word, state all that occurred at the time when the transaction took place.

Answer. Mr. Downey presented the certificate to the bank to have it cashed, and it being in his name, it was supposed to be his property. Of this, however, the officers of the bank, and especially the bank, knew nothing to the contrary. The certificate bore, as well as recollected, eight per cent. interest, and Mr. Downey said it was worth a premium. As a matter of business with the bank, the certificate was presented, and I advised Mr. Downey to endorse it, and have it cashed and collected; he declined making the endorsement, and said he would consider of the business, and make such arrangements as would best comport with his interest. The time of this transaction is not distinctly recollected, but may be ascertained by reference to the book of the bank.

Question by S. S. Downey. State what reason I assigned for refusing to endorse the said certificate; and also state whether I did ask a premium, and would not I have taken the amount stated in the certificate for it; and state, as near as you can, when this thing took place.

Answer. Mr. Downey seemed unwilling to become responsible to the bank for the amount of the certificate. I do not recollect whether he asked a premium, but only that he said that it was worth a premium; as all negotiations concerning the certificate were stopped, so far as the bank was concerned, by his declining to endorse the paper, probably he would have taken the amount for the certificate, but of this I have no distinct recollection, as the endorsement was indispensable before the bank would cash it on any terms. Mr. Downey said he had lately received the certificate, but of the time this deponent has no certain recollection, as for some years he has had nothing to do in the bank. The certificate passed into the hands of Augustus C. Finly, and was

by him handed to Mr. Downey, as I suppose; and further this deponent saith not.

A. W. VENABLE.

A. W. Venable further cross examined.

Question by S. S. Downey. If the said certificate had been good for its principal and interest, would it not have been worth a premium with my endorsement?

Answer. Southern funds were not at a premium; but the certificate, with your endorsement, and the interest accumulated at the due-day, would have been worth more than the sum called for on its face. The bank would have collected it and accounted for the amount raised; and further this deponent saith not.

A. W. VENABLE.

Dr. John R. Hicks being next sworn, deposeth, and saith as follows:

Question by defendants. Were you in the State of Mississippi in January, 1839; if you were, state whether you acted as the agent of Samuel S. Downey in receiving for him from Joseph T. Hicks a certificate of deposite for $9,799 89, issued by the Mississippi Railroad and Banking Company, in payment of that amount due from said Hicks to said Downey for negro hire?

Answer. I was in the State of Mississippi, in January, 1839. I had no express authority to act as his agent.

Question by same. If you had no express authority from said Downey to receive this certificate in payment, state what was your general authority from said Downey; whether you had authority to attend to his business in general; and state, particularly, your reasons for receiving this certificate in payment.

Answer. Samuel S. Downey and myself had negroes hired in the State of Mississippi, and we were in the habit of occasionally, as friends, seeing to each other's business. On my visit to Mississippi, in January, 1839, I received a certificate for myself for the hire of my own negroes; and believing, as a friend of Mr. S. S. Downey, that it would be not only to his interest, but gratifying to him, received one for him also.

Question by same. State whether Joseph T. Hicks did or did not give you a check on Mississippi Railroad and Banking Company for said amount of $9,799 89; or whether he did not give you a check including said amount?

Answer to 3d inter. I have not a distinct recollection of the check, but suppose it was transacted by a check on the bank, and that the sum of $9,799 89 was included in said check. The check included the amount due J. R. Hicks and Col. Jos. Amis, also amounting to near $18,000.

Question 4th. If he gave you a check for the amount, state how you came to take said certificate in place of said check.

Answer to 4th interrogatory. In my deposition, taken by Samuel S. Downey, I set forth in full all the reasons by which I was influenced to receive said certificate of deposite. I there stated, that, as the certificate of deposite bore eight per cent. interest, and as I believed in the faithful and punctual payment of it on the 1st November, 1839, I preferred it myself, and believed it would be highly satisfactory to Mr. S. S. Downey.

5th question by same. Were or were you not informed that, if you insisted on it, the specie would be paid to you for the check before you received the certificate of deposite?

Answer to interrogatory 5th. I was informed that the debt should be paid in specie, if I insisted upon it, before the certificate of deposite was taken out.

6th question by same. Was not said check or certificate of deposite received by you as a payment of the debt of $9,799 89 due from Joseph T. Hicks to said Downey?

Answer to 6th interrogatory. I received it as a payment.

7th question by same. State the time you returned to North Carolina, and whether you carried with you the certificate of deposite, and gave the same to S. S. Downey.

Answer to 7th question. I returned in the month of February, 1839, as well as I recollect. I carried with me the certificate of deposite, and, shortly after my arrival at home, delivered it to Samuel S. Downey.

8th question by same. When you gave said Downey said certificate of deposite, what did you tell him? State all you recollect upon the subject.

Answer to 8th question. On handing Samuel S. Downey said certificate, I gave him all my reasons for receiving the same; I stated to him that my brother, Joseph T. Hicks, had advised me to receive a certificate for the debt due me; that he, as my brother, thought it best; that he had great confidence in the officers of the bank, and that it would be managed well; that the stock was taken by the wealthiest and most influential men in the State, and that he believed it the safest bank in the State of Mississippi; and that it would receive the patronage of the State, which would at once place it above every other institution of the kind in Mississippi; and also informed him of the assurances I had from General Quitman that the certificate of deposite should be punctually paid on the 1st November, 1839, in good funds; specie if required.

9th question by same. State particularly whether you informed him you received it in payment of the debt due to him from Joseph T. Hicks; and state whether you did not also inform him what were the opinions of General Quitman and Joseph T. Hicks about the solvency of the bank; and state what these opinions were.

Answer to the 9th question. I did inform him that I received it in payment of said debt, and informed him of the great confidence my brother had in the solvency of the bank, and his reasons, as set forth

in answer to 8th interrogatory, for entertaining that confidence; and also informed him that my conversation with General Quitman had confirmed me in the opinion entertained by J. T. Hicks.

10th question by same. At the time you received the certificate of deposite, bearing 8 per cent. interest, and at the time Downey received it from you, was not the Mississippi Railroad and Banking Company paying specie?

Answer to the 10th question. It was paying specie.

11th question by same. Were not certificates of that kind then in demand by persons who had funds to invest?

Answer to 11th question. I cannot say that I was well informed on that subject; but know that their notes were in demand, and for the purpose of drawing the specie by the brokers.

12th question by same. After you delivered said certificate of deposite to said Downey, and told him you received it in payment, did not he express great satisfaction, and receive the same from you?

Answer [to] 12th question. After the conversation about the opinions of Joseph T. Hicks and General Quitman, the president of the bank, was concluded, he, Samuel S. Downey, remarked that he had rather have had the gold and silver; but, as I had done for him as I had done for myself, he ought not to complain.

13th question by same. Did he, to your knowledge, ever express any dissatisfaction at the arrangement, or repudiate your acts in receiving it, until after the bank stopped paying specie in June, 1839? And state what time he first became dissatisfied.

Answer [to] 13th question. I never received any intimation that he, Samuel S. Downey, was disposed to repudiate my acts in receiving the certificate of deposite, until some months after suit was brought in the United States court, at Jackson, Mississippi; I think it was in the fall of 1840.

14th question by same. Did Samuel S. Downey ever, to your knowledge, before June or July, 1839, inform or write to Joseph T. Hicks that you had no authority to receive said certificate in payment, and that he would refuse to acknowledge your act in receiving it?

Answer to 14th question. I never heard, either from Joseph T. Hicks or Samuel S. Downey, of any such letter or information, until the fall of 1840.

15th question by same. Was not the railroad company, at the time of said settlement in January, 1839, largely indebted to said Joseph T. Hicks?

Answer to 15th interrogatory. The railroad company was largely indebted to Joseph T. Hicks in January, 1839.

16th question by same. Was not the said certificate received by you in payment of what Joseph T. Hicks, and not Hicks and Arnold, owed said Downey.

Answer to 16th question. The certificate of deposite, as I understood, included a debt due both from Joseph T. Hicks, and from Hicks and Arnold; there was a small amount, as I understood, of money which

Joseph T. Hicks had collected of Wellman & Mills, as agent of Samuel S. Downey, and a small debt for hire of negroes by Joseph T. Hicks, while at work on the road near Jackson, and the balance was due from Hicks & Arnold.

17th question by same. Did said Downey ever offer said certificate for sale, and ask a premium for it? State all you know about this.

Answer to 17th question. I know nothing of his offering the certificate for sale; he remarked to me, I think at May court, 1839, that I must not let Abraham W. Venable have my certificate, for that he was keen to get this certificate, and that he would be enabled to obtain a premium for them; I heard nothing more afterwards.

18th question by same. Did not Downey pay part of the expenses of your trip to Mississippi, at the time said certificate was received by you, in consideration of your agreeing to attend to his business?

Answer to 18th question. He did not pay any part of my expenses.

19th question by same. Did you ever hear Hicks and Arnold, in the office of Buckner & Stewart, admit that they were liable for the payment of this certificate of deposite, if it could not be got from the bank?

Answer to 19th question. I never heard them make such admission in the office of Buckner & Stewart, or anywhere else.

20th question by same. If any admissions were made in said office, state what debt was then alluded to; or, in other words, state whether Hicks and Arnold did not owe to said Downey a large amount of money, independent of said certificate of deposite, which was secured by the paper of the said bank, delivered as collateral security to said Downey, and state whether such conversation was not in relation to this indebtedness.

Answer to 20th question. In order to give an answer understandingly to this question, I will give a history of the whole transaction in the office of Buckner, Barrow & Stewart, for the three were then in copartnership.

After various attempts were made by Samuel S. Downey for himself, and as agent for Col. Joseph Amis, by John R. Hicks and by Hicks and Arnold, to effect a compromise with the bank for the amount due the different parties, various propositions were made by the bank to give mortgage of Planters' Bank stock, Natchez city stock, and some other funds not now recollected, all of which were rejected; Mr. Downey determined for himself and Col. Amis, in council with Hicks and Arnold and myself, that, unless the bank would give a mortgage on the banking house and railroad depot, that suit should be instituted against the bank. The bank rejecting the proposition, Mr. Downey proposed a suit, and after making due inquiry as to the standing of the lawyers of Natchez, determined to employ Buckner, Barrow & Stewart. On going to their office, Mr. Downey informed them of the object of our visit, and stated to them that he wished a judgment to be obtained as speedily as possible. Mr. Buckner informed him the docket of the Mississippi courts were so crowded that a judgment could not be very speedily obtained, and it would be best to bring suit in the United

States court. It accordingly was decided that suit should be brought in said court. Mr. Downey, for himself and as agent for Col. Amis, delivered to the attorneys their certificates of deposite, and *takes* their receipt for the same, to have suit brought upon them, and I handed to them my certificate, and took their receipt for the same purpose. When Hicks and Arnold came forward with their claim, Mr. Buckner remarked to them that they were residents of the State, and could not sue in the United States court; but remarked that the suit could be brought in the United States court by making an assignment to some one out of the State; accordingly, an assignment was agreed upon to be made to Samuel S. Downey. Maj. Arnold remarked that they were indebted to Mr. Downey the sum of about five thousand dollars, which was for negro hire for the year 1839, and for the month of January and February, 1840. Mr. Buckner remarked that that was no impediment to making the assignment. The assignment was accordingly made, and after it was completed and signed, Maj. Arnold remarked to Mr. Downey that he, when the debt was collected, *he* could take his pay, and pay over the balance to them. The assignment was made for the sole purpose of bringing suit in the United States court, and had no reference to the certificate of deposite. The conversation about debt alluded to the debt of about five thousand dollars, and had no reference to the certificate of deposite.

Question by plaintiff, S. S. Downey. When you returned home in February, 1839, and handed S. S. Downey the said certificate of deposite for $9,799 89, and he told you he would have preferred the gold and silver, did he execute to you for Hicks and Arnold any receipt, release, or acquittance, or has he in any way, to your knowledge, executed such release for the debt of $9,799 89.

Answer. Nothing more passed between us than stated in former part of my deposition. He executed no receipt or release; nor did he say anything further, repudiating or confirming the act.

Question by same. In answer to a former interrogatory, you stated that you received for S. S. Downey a certificate of deposite on the Railroad Bank of Mississippi for the said sum of $9,799 89; did you execute to said Hicks for S. S. Downey any receipt, release, or acquittance for the said sum?

Answer. I executed a receipt simply for the certificate of deposite, as well as I recollect.

Question by same. Did you not consider, when you took the said certificate of deposite, that you were acting on your own responsibility, thinking you might thereby subserve the interests of Saml. S. Downey, and that he would see the reasonableness of the transaction, and confirm what you did?

Answer. I stated in a former part of this deposition that I acted in this transaction as his friend, entertaining no doubt but it would be agreeable and satisfactory to him; had I thought for a moment otherwise, I would not have touched it.

Question by same. You state, in a former deposition taken by plain-

tiff in this case, that you had no authority from Samuel S. Downey to take this said certificate, and therefore you could grant no discharge of the debt; you have also stated in this deposition, taken by defendants, that you were acting in this matter simply as the friend of said Downey. To clear this matter of agency, you will please state again whether you had any authority from said Downey to collect, bond, compromise, compound, transfer, and secure debt, and give receipts, releases, acquittances, or enter into any covenant or agreement, on behalf of said Downey, with any person, either by general or special power of attorney; or whether you did not simply take upon yourself to do what you might conceive required by the necessity of the case, or any other friendly acts which you could take upon yourself to do for any friend or neighbor.

Answer. I stated, in a former deposition, that I did not think I had power to have granted a release, but done the act solely as a friend, and done it alone from the friendly relation that existed between us, and from our custom of doing acts of friendship for each other.

Question by same. In one of your answers you state that you first received a check from Joseph T. Hicks, which included your own debt, a debt of Amis, and the debt of Samuel S. Downey; how did you afterwards get the certificate of deposite; was that obtained by yourself with the check, or by Joseph Hicks? Please state the whole history of this matter.

Answer. I stated that I had not a distinct recollection of the check, nor any recollection until the question was proposed in former part of deposition; but must answer it more from my knowledge of bank transaction than from memory. In order that the proper entries might be made on the bank books—Hicks and Arnold being credited on the bank books for amount of work done on railroad—all sums paid were paid by check; a check was of course drawn for the amount and charged to Hicks and Arnold, and this amount of said check placed on the bank books to the credit of Samuel S. Downey, Joseph Amis, and John R. Hicks, and certificates for said amount issued to them.

Question by same. In answer to defendants' last question, you say that no admission was made by Hicks or Arnold, in the office of Buckner & Stewart, of their indebtedness to S. S. Downey in the sum of $9,799 89; could not the said Downey and said Joseph Hicks, or Hicks & Arnold, have been present in the office of Buckner & Stewart when you were absent?

Answer. Such a circumstance was possible; but I was present during the time of making the assignment alluded to.

Question by same. You state, in answer to 2d question of defendant, that you and S. S. Downey were in the habit, as friends, of attending to each other's business in the State of Mississippi.

Answer. I transacted some business with my brother, Benjamin J. Hicks, in endeavoring to secure a debt through my brother, Benjamin, that was due from Robert Wade to Samuel S Downey, and in the in-

stance of the attachment of Bryant, of Mississippi, on the negroes of said Downey, I aided and rendered him all the assistance in my power as his friend.

Question by same. Were you particularly instructed by S. S. Downey to attend to the business above alluded to, and at what time?

Answer. I was requested to attend to the matters above alluded to; in the case of Bryant I had a power of attorney, and in the other I had Wade's bond; I think it was in the month of Decr., 1842, or November of same year.

Question by same. Did Joseph T. Hicks proffer at the time you received this certificate of deposite to hire again the negroes of S. S. Downey, then in his possession? If so, state why you did not hire them to him.

Answer. He wished to hire the negroes again, but insisted that Lewis, Mary, and some others not now recollected, were useless, and that a reduction in the price ought to be made; I told him he must write you, S. S. Downey, on that subject; that I did not feel at liberty to make a reduction, and the hire could stand at what it was unless Mr. Downey consented to a reduction, and he promised me to write to that effect; I had no authority to hire them.

Question by same. You state in answer to question 4th, that you were induced to have a high confidence in the Mississippi Railroad Bank; please state how this favorable impression was produced, and who particularly spoke favorably to you of the bank.

Answer. I have stated in my deposition taken by Saml. S. Downey, and the present deposition, that my confidence was produced by the conversation I had with my brother J. T. Hicks, and Genl. Quitman, and the standing of the bank with the brokers; I relied greatly upon the fact that I did not believe my brother would pursue any course by which I was to lose six thousand dollars.

Question by the same. You state that the debt which the railroad owed to Joseph T. Hicks, and to Hicks and Arnold, was assumed by the bank; do you think the railroad could have paid him in any other way than through the agency of said bank?

Answer. It was a railroad and banking company, and, I believe and suppose, that all the debts were paid through the bank, the two being joined under one corporation, I expect.

Question by same. To what amount do you suppose Joseph T. Hicks, or Hicks & Arnold, were creditors of the said railroad and banking company?

Answer. At the time of settlement, when Samuel S. Downey and myself were in Natchez, in Feb'y, 1840, I think the railroad and banking company owed them about twenty-one thousand dollars.

Question by same. Did you ever know the bank to pay specie of your own knowledge? If so, state the time and particulars.

Answer. When in Natchez in January 7th, 1839, I was in the bank, and saw demands for small sums in silver paid out without hesitation, the whole probably not amounting to more than one hundred dollars;

Mr. Stewart, one of the attorneys mentioned in this deposition, informed Mr. Downey in my presence that he received from the bank in the spring, or early part of the summer, 1839, fifteen thousand dollars at one time, for a draft sent him to collect; this conversation occurred in Mr. Stewart's office, in February, 1840.

Question by same. You say you were informed that you could have got the specie instead of the certificate if you had demanded it. You will please state particularly who gave you this information, and whether it was a distinct officer of the bank, *officer* to pay the specie, or a simple assurance that it could be paid.

Answer. I answered in the former part of my deposition that my conversation was with General Quitman, and my conversation with him was not in the bank, but in the tavern, in the room occupied by my brother and myself, and it was then that I received the assurance; no distinct demand was made; this was before I received the certificate of deposite?

Question by same. Was not Joseph T. Hicks in such a situation, with regard to his claims on this banking company, that it would have been highly convenient for him to pay your debt, and the debt of S. S. Downey, by checking on the said bank?

Answer. He rarely, I expect, ever paid a debt but by checking on said bank; I think all his transactions were through the bank.

Question by same. Did the railroad bank, or any of its officers, manifest an anxiety for you to take this certificate of deposite.

Answer. I had no conversation with any but the president of the bank; he manifested no anxiety on the occasion, but stated as the bank was going into operation just at that time, it would or might suit them best to pay the money 1st November following, when the stockholders would have more generally *have* paid in their stock.

Question by same. Was not Joseph T. Hicks a warm supporter of the credit and solvency of the bank?

Answer. I have no doubt but he, Joseph T. Hicks, as firmly believed in its solvency as he did in his own existence; he did support its solvency, both in conversation and by letter, to the last letter I received from him in 1839, which I think was in August of that year.

Question by same. Were you a purchaser of negroes from Joseph T. Hicks, in his lifetime, or from his executor? If so, please state the number of negroes you bought, and the prices at which you bought them, and how they were paid for; and also state the time when the purchase was made.

Answer. I hired my negroes to Hicks & Arnold, the year 1839, for $3,000, and in 1840 for, I think, near $2,000; when Mr. Downey was in Mississippi he, J. T. Hicks, paid me the money; I laid it out in land in the State of Mississippi; my brother became a partner in the purchase; he had more negroes than I had, and I purchased of him, I think, about five thousand dollars worth of negroes to make our number equal; I deducted from the sum the half of the land, and executed to my brother my bond for the balance of the purchase of the negroes; I

think the number, men, women, and children, amounted in number to ten.

Question by same. Will you state the amount of that bond or balance, and when it was paid; whether before or since the death of Joseph T. Hicks?

Answer. I think it was about three thousand dollars; the exact amount is not recollected; but this is within two hundred dollars of it; I paid the note to Benjamin J. Hicks in November or December, 1842.

Question by same. Have you ever received any portion of your certificate of deposite?

Answer. I have never received one cent from any person in any manner or shape whatever.

Question by same. Did you ever present it for payment to Joseph T. Hicks or to his executors?

Answer. I never did; I should have considered it highly dishonorable to do so; Mr. Downey wished me to join him in a suit; I replied I would burn my right hand off first.

And further this deponent sayeth not.

JNO. R. HICKS.

I, Lunsford A. Paschall, presiding justice of the court of pleas and quarter sessions, for the county of Granville, State of North Carolina, under and by virtue of an act of Congress, entitled "An act to establish the judicial courts of the United States," do certify that, at the request of the defendants, in cause mentioned in the foregoing depositions, I caused the deponents therein, John R. Hicks and Abraham W. Venable aforesaid, to come before me, at the time and place mentioned in the caption, (and in the notice herein enclosed.)

And I further certify, that the reason for taking said depositions of John R. Hicks and Abraham W. Venable is, that the said witnesses reside in the county of Granville, State of North Carolina aforesaid, more than one hundred miles from Jackson, the place of the trial of said civil cause, depending as aforesaid in the said circuit court of the United States, for the southern district of Mississippi; and that notice was given to the said plaintiff to be present at the taking of the said depositions, and to put interrogatories, if he thought fit; for that the said plaintiff resides within one hundred miles, to wit, at the distance of fifteen miles from the said town of Oxford, the place of taking said depositions.

I do further certify, that I am not of counsel or attorney to either of the parties in said depositions mentioned; not interested in the event of said civil cause depending between said parties; and that the said depositions were reduced to writing by the said witnesses, respectively, in my presence.

In testimony whereof I hereunto subscribe my hand and affix my private seal, having no seal of office.

L. A. PASCHALL, [SEAL.]

Presiding justice of the court of pleas and quarter sessions of the county of Granville, State of North Carolina.

482.

STATE OF NORTH CAROLINA,
Granville county.

Be it remembered, that, on this twelfth day of March, in the year of our Lord one thousand eight hundred and forty-six, before me, Lunsford A. Paschall, presiding justice of the court of pleas and quarter sessions, for the county of Granville, State of North Carolina, under and by virtue of an act of Congress, entitled "An act to establish the judicial courts of the United States," personally appeared at the register's office, in the court-house at Oxford, in Granville county, State of North Carolina aforesaid, James M. Wiggins, Thomas B. Littlejohn, and Dr. John R. Hicks, witnesses of lawful age, for and on behalf of the defendants, in a certain civil cause depending in the circuit court of the United States, for the southern district of Mississippi, holden at Jackson, wherein Samuel S. Downey is plaintiff, and Benjamin J. Hicks, executor, and Mary M. Hicks, executrix of Joseph T. Hicks, dec'd, are defendants; and that the said witnesses, being by me first carefully examined and sworn to testify the whole truth, make oath, depose, and say, that they reside in the county of Granville, State of North Carolina aforesaid, and more than one hundred miles from the said city of Jackson, the place of the trial of the said cause.

And they further depose and say as follows, that is to say, James M. Wiggins being first sworn, deposeth and sayeth as follows:

Question by defendants. Are you acquainted with the handwriting of Samuel S. Downey, the plaintiff in this cause?

Answer. I am.

Question by same. Look at the letter now showed to you, dated Abrams' Plains, 4th December, 1838, with Samuel S. Downey's signature thereto, and addressed to Doctor Joseph T. Hicks, Natchez, Mississippi, (which said letter, marked A, and enclosed in this deposition,) and say in whose handwriting the body of the said letter and signature, and superscription thereto, are written?

Answer. I think in the handwriting of Samuel S. Downey.

And further this deponent sayeth not.

Sworn and subscribed before me, this 12th day of March, 1846.

JAMES M. WIGGINS.
L. A. PASCHALL, *Pr. Justice, &c.*

Thomas B. Littlejohn, being next sworn and examined, deposeth and sayeth as follows:

Question by the defendant. Are you acquainted with the handwriting of Samuel S. Downey, the plaintiff in this cause?

Answer. I think I am.

Question by same. Look at the letter now showed to you, dated Abrams' Plains, 4th December, 1838, with Samuel S. Downey's signature thereto, and addressed to Doctor Joseph T. Hicks, Natchez, Mississippi, (which said letter, marked A, and enclosed in this deposi-

tion,) and say in whose handwriting the body of the said letter, and the signature, and superscription thereto, are written?

Answer. I think the body of said letter and the signature, as well as the superscription, is in the handwriting of Samuel S. Downey.

And further this deponent sayeth not.

THOMAS B. LITTLEJOHN.

Sworn and subscribed before me, this 12th day of March, 1846.

L. A. PASCHALL, *Pr. Justice, &c.*

John R. Hicks, being next duly sworn, deposeth and saith as follows:

Question by defendants. Are you acquainted with the handwriting of Samuel S. Downey, the plaintiff in this cause?

Answer. I am acquainted with his handwriting.

Question by same. Look at the letter now showed to you, dated Abrams' Plains, 4th December, 1838, with Samuel S. Downey's signature thereto, and addressed to Doctor Joseph T. Hicks, Natchez, Mississippi, (which said letter, marked A, and enclosed in this deposition,) and say in whose handwriting the body of the said letter, and the signature, and superscription thereto, are; and state all you know about said letter.

Answer. The body, signature, and superscription, I believe to be in the handwriting of Samuel S. Downey; all knowledge of said letter had escaped my recollection, until revived by its exhibition to me by Mr. Lainer, the attorney. I have now some recollection of being the bearer of said letter. I think I received it of Samuel S. Downey and delivered it to Joseph T. Hicks on the Mississippi railroad, not far from Natchez, where he was at the time at work on the railroad. I received it from Samuel S. Downey on my starting to Mississippi in the month of December, 1838, and delivered it to Joseph T. Hicks on my arrival in Mississippi, I think it was about the latter part of the same month, or the 1st of January, 1839.

Question by same. State whether or not Joseph T. Hicks paid you a check or certificate of deposite, alluded to in your former deposition, at or about the time you delivered him the said letter.

Answer. The certificate of deposite alluded to in my former deposition was delivered to me some ten or fifteen days after the delivery of the said letter.

Question by same. State whether or not Joseph T. Hicks acted as the agent of Samuel S. Downey during the year 1836, '7, and '8; and whether or not the said Downey agreed to allow him for clothing the negroes, of which Joseph T. Hicks had the management, during that period of time.

Answer. In the commencement of the year 1836, Samuel S. Downey hired his negroes to Wilman & Mills to work on the Mississippi railroad, Natchez; the contract was made in Lauderdale county, Alabama. I, the said John R. Hicks, also hired my negroes to the said Wilman & Mills for the same purpose. We were unwilling to trust

our negroes without some agent that we could rely upon, and Joseph T. Hicks was employed to act as our agent, to see that the negroes were properly clothed, that they were well attended in sickness, and to the collection of the debts from Wilman & Mills; articles of agreement were entered into between Joseph T. Hicks, who was to act as the agent for John R. Hicks and Samuel S. Downey. I think, as well as I recollect, that the medical bills were to be paid by Wilman & Mills, and the clothing at the expense of the owners of the slaves; the articles of agreement will show that in those articles of agreement we were to pay Joseph T. Hicks's board in Natchez. The board was to be paid to Joseph T. Hicks by the parties, in proportion to the sums received for the hire of the negroes. Comfortable beds and bed clothing were also to be furnished the negroes at the expense of Wilman & Mills; I considered Joseph T. Hicks as acting as agent for me during the whole of the time specified, 1836, 1837, 1838; I know of no revocation of the power of attorney by Samuel S. Downey; nor can I say that after Joseph T. Hicks hired the negroes in copartnership with Maj. Arnold, that Mr. Sam'l S. Downey considered himself as responsible for any payment to Joseph T. Hicks for his agency; but, previous to that date, I think Mr. Downey considered himself as bound to pay the said Joseph T. Hicks his proportion of board as above stated.

Question by same. State whether you know any thing of the account [between] Mr. Samuel S. Downey to Joseph T. Hicks, debtor, which is marked B, and enclosed in this deposition, and which is now shown to you; if so, state all you know relative to the several items charged therein, and whether you had negroes to clothe in Mississippi, and how much you paid for suits, and different articles of clothing for them, (such as shoes, &c.;) and state particularly whether or not Joseph T. Hicks paid you the $9,799 78, as charged in said account on January 10, 1839.

Answer. I think the articles for clothing in said account were the prices paid by me for clothing for negroes which I had hired in Mississippi during the year 1836, 1837, and 1838; the prices of goods and clothing were much higher than afterwards. The certificate of deposite for $9,799 78, as charged in said account, and as referred to above in my deposition, was handed to me the 10th January, 1839.

Question by plaintiff. State whether I was to pay Joseph T. Hicks any other compensation for his services as my agent, than my proportion of his board in the city of Natchez; and also state whether his agency for me did not terminate when he hired my negroes.

Answer. Samuel S. Downey was only to pay his proportion of Joseph T. Hicks's board in Natchez for his services as agent. No other compensation was specified in the articles of agreement; I state expressly that I know of no correspondence between Joseph T. Hicks and Sam'l S. Downey, as to the termination of Joseph T. Hicks's agency, never having heard either of them say that the agency ceased, or continued after Joseph T. Hicks formed a co-partnership with Major Arnold, and became a joint partner in the hire of the negroes. I believe

tion,) and say in whose handwriting the body of the said letter, and the signature, and superscription thereto, are written?

Answer. I think the body of said letter and the signature, as well as the superscription, is in the handwriting of Samuel S. Downey.

And further this deponent sayeth not.

THOMAS B. LITTLEJOHN.

Sworn and subscribed before me, this 12th day of March, 1846.

L. A. PASCHALL, *Pr. Justice, &c.*

John R. Hicks, being next duly sworn, deposeth and saith as follows:

Question by defendants. Are you acquainted with the handwriting of Samuel S. Downey, the plaintiff in this cause?

Answer. I am acquainted with his handwriting.

Question by same. Look at the letter now showed to you, dated Abrams' Plains, 4th December, 1838, with Samuel S. Downey's signature thereto, and addressed to Doctor Joseph T. Hicks, Natchez, Mississippi, (which said letter, marked A, and enclosed in this deposition,) and say in whose handwriting the body of the said letter, and the signature, and superscription thereto, are; and state all you know about said letter.

Answer. The body, signature, and superscription, I believe to be in the handwriting of Samuel S. Downey; all knowledge of said letter had escaped my recollection, until revived by its exhibition to me by Mr. Lainer, the attorney. I have now some recollection of being the bearer of said letter. I think I received it of Samuel S. Downey and delivered it to Joseph T. Hicks on the Mississippi railroad, not far from Natchez, where he was at the time at work on the railroad. I received it from Samuel S. Downey on my starting to Mississippi in the month of December, 1838, and delivered it to Joseph T. Hicks on my arrival in Mississippi, I think it was about the latter part of the same month, or the 1st of January, 1839.

Question by same. State whether or not Joseph T. Hicks paid you a check or certificate of deposite, alluded to in your former deposition, at or about the time you delivered him the said letter.

Answer. The certificate of deposite alluded to in my former deposition was delivered to me some ten or fifteen days after the delivery of the said letter.

Question by same. State whether or not Joseph T. Hicks acted as the agent of Samuel S. Downey during the year 1836, '7, and '8; and whether or not the said Downey agreed to allow him for clothing the negroes, of which Joseph T. Hicks had the management, during that period of time.

Answer. In the commencement of the year 1836, Samuel S. Downey hired his negroes to Wilman & Mills to work on the Mississippi railroad, Natchez; the contract was made in Lauderdale county, Alabama. I, the said John R. Hicks, also hired my negroes to the said Wilman & Mills for the same purpose. We were unwilling to trust

our negroes without some agent that we could rely upon, and Joseph T. Hicks was employed to act as our agent, to see that the negroes were properly clothed, that they were well attended in sickness, and to the collection of the debts from Wilman & Mills; articles of agreement were entered into between Joseph T. Hicks, who was to act as the agent for John R. Hicks and Samuel S. Downey. I think, as well as I recollect, that the medical bills were to be paid by Wilman & Mills, and the clothing at the expense of the owners of the slaves; the articles of agreement will show that in those articles of agreement we were to pay Joseph T. Hicks's board in Natchez. The board was to be paid to Joseph T. Hicks by the parties, in proportion to the sums received for the hire of the negroes. Comfortable beds and bed clothing were also to be furnished the negroes at the expense of Wilman & Mills; I considered Joseph T. Hicks as acting as agent for me during the whole of the time specified, 1836, 1837, 1838; I know of no revocation of the power of attorney by Samuel S. Downey; nor can I say that after Joseph T. Hicks hired the negroes in copartnership with Maj. Arnold, that Mr. Sam'l S. Downey considered himself as responsible for any payment to Joseph T. Hicks for his agency; but, previous to that date, I think Mr. Downey considered himself as bound to pay the said Joseph T. Hicks his proportion of board as above stated.

Question by same. State whether you know any thing of the account [between] Mr. Samuel S. Downey to Joseph T. Hicks, debtor, which is marked B, and enclosed in this deposition, and which is now shown to you; if so, state all you know relative to the several items charged therein, and whether you had negroes to clothe in Mississippi, and how much you paid for suits, and different articles of clothing for them, (such as shoes, &c.;) and state particularly whether or not Joseph T. Hicks paid you the $9,799 78, as charged in said account on January 10, 1839.

Answer. I think the articles for clothing in said account were the prices paid by me for clothing for negroes which I had hired in Mississippi during the year 1836, 1837, and 1838; the prices of goods and clothing were much higher than afterwards. The certificate of deposite for $9,799 78, as charged in said account, and as referred to above in my deposition, was handed to me the 10th January, 1839.

Question by plaintiff. State whether I was to pay Joseph T. Hicks any other compensation for his services as my agent, than my proportion of his board in the city of Natchez; and also state whether his agency for me did not terminate when he hired my negroes.

Answer. Samuel S. Downey was only to pay his proportion of Joseph T. Hicks's board in Natchez for his services as agent. No other compensation was specified in the articles of agreement; I state expressly that I know of no correspondence between Joseph T. Hicks and Sam'l S. Downey, as to the termination of Joseph T. Hicks's agency, never having heard either of them say that the agency ceased, or continued after Joseph T. Hicks formed a co-partnership with Major Arnold, and became a joint partner in the hire of the negroes. I believe

the co-partnership commenced some time of the year 1837; of the precise date I cannot speak.

And further this deponent sayeth not.

JNO. R. HICKS.

Sworn and subscribed before me, this 12th day of March, 1846.

L. A. PASCHALL,
Presiding justice, &c.

I, Lunsford A. Paschall, presiding justice of the court of pleas and quarter sessions for the county of Granville, and State of North Carolina, under and by virtue of an act of Congress, entitled "an act to establish the judicial courts of the United States," do certify, that at the request of the defendants in the cause mentioned in the foregoing depositions, I caused the deponents, three, James M. Wiggins, Thomas B. Littlejohn, and John R. Hicks aforesaid, to come before me at the time and place mentioned in the caption. And I do further certify, that the reason for taking the said depositions of the said James M. Wiggins, Thomas B. Littlejohn, and John R. Hicks, is because the said witnesses reside in the county of Granville, State of North Carolina aforesaid, and more than one hundred miles from Jackson, the place of trial of the said civil cause, depending between the parties, in the said depositions mentioned, in the said court of the United States, for the southern district of Mississippi as aforesaid. And that due notice was given to the plaintiff, Samuel S. Downey, of the time and place of taking the said depositions, and to attend at the taking thereof, and to put cross interrogatories if he should think proper, for that the said plaintiff resides within one hundred miles of the town of Oxford, the place of taking the said depositions. And I do further certify, that I am not of counsel or attorney for either of the parties in the said suit or civil cause, and that I am in no wise interested in the event of the said civil cause depending between the said parties as aforesaid. And I do further certify, that the said depositions were reduced to writing by the said witnesses respectively in my presence.

In testimony whereof I have hereunto subscribed my name, and affixed my private seal, having no seal of office.

LUNSFORD A. PASCHALL,
Presiding justice of the court of pleas and quarter sessions, for the county of Granville, State of North Carolina.

(*Copy of letter marked A.*)

ABRAM'S PLAINS, *4th Dec.*, 1838.

DR. JOSEPH: Your favor of the 29th ultimo came to hand this morning, which I was much gratified to receive. I have wrote you a letter since the one you mention in your last, which is chiefly on the subject of money matters, which I expect *has* just now about getting to you,

to which I refer you to, as I wish its contents, as specified, particularly attended to; and if you wish to accommodate me I will esteem it a particular favor if you will send me all the funds that are in your hands that you may think I am entitled to, which you can ascertain as well as I can, as you have in your hands all the materials necessary to make a settlement. The doctor is authorized to receipt to you for any amount you may pay him, and as I am now in want of funds, and you have a plenty in hand, if you can advance to him for me more than you are owing at this time, the overplus I will account to you for when we settle, as I expect to see you in the course of the next year, when I shall endeavor to make a final settlement with you; I now want as much as $12,000, which you must not fail to send me that amount, whether you owe it to me or not, and I hold myself accountable to you for that amount on a settlement.

Yours, truly,

SAML. S. DOWNEY.

The defendants then read the deposition of William R. Hicks.

STATE OF NORTH CAROLINA,
Granville county.

The deposition of Doctor William R. Hicks, a witness produced on the part of the plaintiffs in a suit pending and for trial in the circuit court of the United States, for the southern district of Mississippi, in which Samuel S. Downey is plaintiff, and Benjamin J. Hicks, executor, and Mary M. Hicks, executrix, of Joseph T. Hicks, deceased, are defendants.

Taken before me, Thomas B. Littlejohn, one of the justices of the county court of pleas and quarter sessions, for the county of Granville aforesaid, this 16th day of October, A. D. 1846, at the office of clerk and master of equity, in the court-house in the said county, and to be read in evidence on the trial of said cause.

The said William R. Hicks, being by me first carefully examined, and cautioned, and swo. n, to testify the whole truth, did depose and give evidence as follows, that is to say: (Both parties being present by their attorneys.)

Question by plaintiff. In your former deposition taken by the defendant in this case, you have testified in relation to a conversation held by Samuel S. Downey and John R. Hicks at the house of the latter; please restate, as near [as] you can, the substance of that conversation, and the time when it was held.

Answer. The conversation related to their affairs in Mississippi; the portion which struck my attention most forcibly was that each of them had certificates of deposite in a bank which I think they called the Railroad bank, and that they could have received the amount in eastern funds by losing eight per cent., but they thought it best, as that was such a productive country, not to lose eight per cent.; the conversation was

held prior to the first of February, 1839; I do not think that I heard any conversation after that time, as I removed to Linbank after that time.

Question by same. Do you know when, or how long, or whether or not Joseph T. Hicks was agent for Samuel S. Downey, and with what business, if any, it related, and with what persons?

Answer. I resided at Dr. John R. Hicks from the latter part of the winter of 1836 to the 1st February, 1839; during all this time Samuel S. Downey was a frequent visitor at Dr. John R. Hicks; their Mississippi affairs was a frequent topic of conversation; Joseph T. Hicks was always spoken of during this time as the agent for each of them; the agency was to attend to the hiring their negroes; I do not recollect the name of the individuals to whom the negroes were hired; I do not know when this agency commenced, or when it terminated.

Question by same. Do you know when, and with what persons, the business was transacted to which the agency referred, or whether Joseph T. Hicks hired the negroes himself, or whether the agency during the three years (which according to your impression existed during that time) was not in reference to the collection of moneys still due to Samuel S. Downey from Wellman & Mills for the hire of negroes prior to the year 1839?

Answer. I do not know when the agency commenced, or the business of the agency; I do not know whether Joseph T. Hicks hired the negroes or not; I know nothing about the collection of moneys due Samuel S. Downey from Wellman & Mills, nor do I know whether the agency referred [to] the collection of moneys due from Wellman & Mills.

Question by same. Do you know whether or not Joseph T. Hicks deposited money in the railroad bank in Natchez to the credit of Samuel S. Downey, or whether he took out from said bank a certificate of deposite (to the credit of Samuel S. Downey) referred to in your former deposition, and if either or both, by what authority he acted?

Answer. I do not know whether he deposited money or not, nor by what authority; from their conversations I understood that he got the certificate.

Question by the same. Do you know when or by whom that certificate reached Samuel S. Downey?

Answer. I do not think it was prior to 1st February, 1839.

Question by the same. In your former deposition you spoke of their valuing the certificate from the productiveness of the State of Mississippi; please state as near as you can all that was said, and by whom, in relation to that subject, and whether *it* was not arguments adduced by Dr. John R. Hicks (who had just returned from Mississippi, bringing with him said certificate for himself and Samuel S. Downey) which influenced Samuel S. Downey to agree with Dr. J. R. Hicks as to the value of said certificates.

Answer. I do not recollect which it was who brought forward the ar-

gument, but it was brought forward, and each seemed convinced from what passed that evening, I thought, the certificates were good.

Question by the same. Do you know whether Samuel S. Downey authorized the deposite of the money due for the hire of the negroes, (on which the certificate was drawn,) or was it done without his authority or knowledge?

Answer. I do not.

Question by defendants. Did you not understand, from the conversations you had between Dr. John R. Hicks and S. S. Downey, which had come into his hands as their agent in the railroad bank in Mississippi, and had taken certificates of the deposite, which certificates he gave to Dr. John R. Hicks, one for himself, and the other to be by him delivered to S. S. Downey; that Dr. J. R. Hicks did deliver the said certificate to S. S. Downey, and that said Downey expressed himself satisfied therewith and with the deposite of the money belonging to him in the said bank?

Answer. I thought from their conversation that Joseph T. Hicks had procured the certificates for them, and each were satisfied with them, and thought them good, from the arguments referred to above, (but I know not which one brought forward the arguments.)

WM. R. HICKS.

Subscribed and sworn to before me, this 16th day of October A. D. 1846.

THO. B. LITTLEJOHN,
One of the justices of the court of pleas and quarter sessions of Granville county.

I, the said Thomas B. Littlejohn, justice as aforesaid, do hereby certify, that the foregoing deposition was taken before me, on the day and at the place above mentioned, and was signed by the deponent in my presence after same was reduced to writing, which was done by the deponent in my presence, the deponent having been by me first carefully examined, and cautioned, and sworn to testify the whole truth; and I further testify, that I am not, nor have been, of counsel or attorney to either of the parties, nor in any manner interested in the event of the said cause.

Given under my hand at Oxford, in the said county, the said 16th day of October, A. D. 1846.

THO. B. LITTLEJOHN,
One of the justices of the court of pleas and quarter sessions of Granville county.

NORTH CAROLINA,
Granville county, ss:

I, James M. Wiggins, clerk of the court of pleas and quarter sessions for the county and State aforesaid, hereby certify, that Thomas B. Littlejohn, esq., whose signature appears to the foregoing certificate, is

one of the justices of the said court, and to all his official acts as such full faith and credit should be given.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at office, in Oxford, the 16th day of October, A. D. 1846. [L. S.]

JAS. M. WIGGINS, *Clerk.*

STATE OF NORTH CAROLINA,
Granville county.

Be it remembered, that, on this 22d day of April, in the year of our Lord eighteen hundred and forty-six, before me, Lumsford A. Paschall, presiding justice of the court of pleas and quarter sessions for the county of Granville, and State of North Carolina aforesaid, under and by virtue of an act of Congress, entitled "an act to establish the judicial courts of the United States," personally appeared at the register's office, in the court house at Oxford, in the said county of Granville, Doct. William R. Hicks, a witness of lawful age, for and on behalf of the defendants in a certain civil cause now pending in the circuit court of the United States, for the southern district of Mississippi, holden at Jackson, wherein Samuel S. Downey is plaintiff, and Benjamin G. Hicks, executor, and Mary M. Hicks, executrix, of Joseph T. Hicks, deceased, are defendants; and that the said witness, being by me first carefully examined and sworn to testify the whole truth, maketh oath, deposeth, and saith, that he resides in the county of Granville, State of North Carolina aforesaid, and more than one hundred miles from the said city of Jackson, trial of the said cause; he further deposeth and saith as follows, to wit:

Question by the defendants. State whether you ever had or were present at any conversation with Samuel S. Downey, the plaintiff in this cause, relative to the conduct of Joseph T. Hicks, deceased, as his agent in the State of Mississippi; and if so, what that conversation was.

Answer. I have been present at a conversation held between Samuel S. Downey and Dr. John R. Hicks, relative to Joseph T. Hicks acting for him in Mississippi; they spoke of Joseph T. Hicks's management of S. S. Downey's negroes, and depositing the hire in a bank which I think they called the Railroad bank; each had the hire of their negroes deposited in the same manner, and both expressed their satisfaction with the deposite; at the same conversation it was stated they could have received the amount deposited in eastern funds, by giving eight per cent.; each said it was best not to give eight per cent., because Mississippi was such a productive country that its banks would soon be at par.

Question by plaintiff. Did you not understand, in said conversation, that your uncle, Joseph T. Hicks, then in Mississippi, had made said deposite in the railroad bank for both Dr. John R. Hicks and Samuel S. Downey?

Answer. I did.

Question by same. Do you know whether it was Dr. John R. Hicks, or Samuel S. Downey who stated they could have received the amount deposited in eastern funds?

Answer. I do not know which.

Question by same. Do you know who, or whether each expressed himself satisfied that the certificate of deposite was taken in preference to giving the eight per cent. on eastern funds.

Answer. I recollect that each did express himself satisfied with the deposite, and preferred it to giving eight per cent., for reasons stated in my first answer.

Question by same. Please state, as near as you can, when the said conversation took place, and whether it was held as an explanation to you of the matters and arrangements alluded to, or were you not present only of your own choice?

Answer. The conversation took place between the first of 1837 and the first of February, 1839; it was not held to explain anything whatever to myself; it was held at Dr. J. R. Hicks's, at which place I then resided.

WM. R. HICKS.

Sworn to and subscribed before me, this 22nd day of April, 1846.

L. A. PASCHALL,
Pr. J. C. P. & Q. S. for Gr. county.

I, Lumsford A. Paschall, presiding justice of the court of pleas and quarter sessions for the county of Granville, State of North Carolina aforesaid, under and by virtue of an act of Congress, entitled "an act to establish the judicial courts of the United States," do hereby certify, that, at the request of the defendants in the cause mentioned in the foregoing deposition, I caused the deponent therein, Doct. William R. Hicks aforesaid, to come before me, at the time and place mentioned in the caption; and I further certify, that the reason for taking the said deposition of Dr. William R. Hicks is, that the said witness resides in the county of Granville, State of North Carolina aforesaid, more than one hundred miles from Jackson, the place of the trial of the said civil cause depending as aforesaid in the said circuit court of the United States, for the southern district of Mississippi; and that due notice was given to the said plaintiff to be present at the taking of the said deposition, and put cross interrogatories, if he should think proper; for that the said plaintiff resides in the county of Granville, State of North Carolina aforesaid, and within one hundred miles of the town of Oxford, the place of the taking of the said deposition. I do further certify, that I am not of counsel or attorney for either of the parties in the said deposition mentioned, nor in anywise interested in the event of the said civil cause depending between the said parties as aforesaid; and that this said deposition was reduced to writing by the said witness in my presence.

In testimony whereof I have hereunto set my hand and affixed my private seal, (having no seal of office,) this 22d day of April, 1846.

L. A. PASCHALL, [SEAL]
Presiding justice, &c.

Also the deposition of A. W. Venable, (see the deposition of Venable, before copied, pages .)

And the deposition of Horatio N. Lee, as follows:

STATE OF PENNSYLVANIA,
Armstrong county, sct:

Be it remembered, that, on this nineteenth day of September, A. D. one thousand eight hundred and forty-five, before me, Thomas White, judge of the tenth judicial district, composed of the counties Westmoreland, Armstrong, Indiana, and Cambria, under and by virtue of an act of Congress, entitled an act to establish the judicial courts of the United States, personally appeared Horatio N. Lee, esq., residing in the borough of Kittanning, a witness of lawful age, for and on behalf of the defendants, in a certain cause depending in the circuit court of the United States, in and for the ninth circuit and southern district of Mississippi, holden in Jackson, wherein Samuel S. Downey is plaintiff, and Benjamin J. Hicks and Mary M. Hicks, executors of Joseph T. Hicks, are defendants; and the said witness, being by me first carefully examined, and cautioned, and sworn to testify the whole truth, makes oath, deposeth and sayeth, that he resides in the borough of Kittanning, Armstrong county, and more than one hundred miles from Jackson aforesaid, the place of the trial of this cause; furthermore he saith, that some time in the winter of 1840 and 1841, Major, and a gentleman representing himself as Samuel S. Downey, of North Carolina, came into my [house] at Kittanning, aforesaid, and I understood from the conversation of both gentlemen, who both seemed to be considerably excited, that said Downey had a bond or note against said Arnold and Hicks for about five thousand dollars, for negro hire in the State of Mississippi. Major Arnold asked said Downey why he did not go to Mississippi and collect the claim of Joseph T. Hicks, in whose hands, according to the terms of dissolution of partnership between himself and Hicks, he had placed funds to pay the claim. Said Downey replied, it was easier collecting money in Pennsylvania than Mississippi, and that he intended to look to said Arnold for payment of the said claim. Said Arnold then said, have you any other claims against us than the bond? Mr. Downey replied, nothing except a small not [e] for four or five hundred dollars. Said Arnold said, for this last mentioned claim you know you were to take the same kinds of funds we received from the railroad company; to which said Downey assented, and said he did not care anything about the small claim, but that he was determined to make said Arnold pay the large claim aforesaid, and would bring suit before he left Pennsylvania.

HORATIO N. LEE.

Sworn and subscribed before me, the day and year above written.
THOMAS WHITE.

I, Thomas White, presiding judge of the court of common pleas of Armstrong county, &c., under and by virtue of an act of Congress, entitled an act to establish the judicial courts of the United States, do certify, that at the request of the defendants, in the cause mentioned in the foregoing deposition, I caused the deponent therein, Horatio N. Lee, to come before me at the time and place mentioned in the caption; and I further certify, that the reason for taking said deposition of said Horatio N. Lee is, that the said witness resides in Kittanning, Armstrong county, Pennsylvania, more than one hundred miles from Jackson, the place of trial of said cause, depending as aforesaid in the circuit court of the United States, for the southern district of Mississippi; and that no notification was given to said plaintiff, nor to any agent or attorney of the same, to be present at the taking of the said deposition, and to put interrogatories if he might think fit, because neither the said plaintiff, nor any attorney or agent, resides within one hundred miles of said borough of Kittanning, Armstrong county, the place of taking said deposition. I do further certify, that I am not of counsel or attorney to either of the parties in said deposition mentioned, nor interested in the event of said cause depending between said parties; that the said deposition was reduced to writing by me in presence of said witness.

In testimony whereof I have hereunto subscribed my name and affixed my seal, this 19th day of September, A. D. 1845.

THOMAS WHITE, [SEAL]
Presiding judge of court of common pleas of Armstrong county.

The defendants then offered the deposition of David Cordray, and plaintiff objected to the reading of said deposition in evidence, for that it appeared from the examination and cross examination that the matters therein stated were not within the witness's own knowledge, but derived from information of parties and others, competent witnesses; but the court overruled the objection, and permitted parts of the said deposition to be read, and excluded parts of the same; to which ruling of the court the plaintiff then and there excepted. The said deposition is in the words and figures following:

Interrogatories to be propounded to David Cordray, a citizen of the State of Missouri, whose answers thereto are to be read by agreement in a suit now pending in the United States circuit court, in the State of Mississippi, wherein Samuel S. Downey is plaintiff, and the executors of Joseph T. Hicks are defendants, on the part of the defendants.

Interrogatory 1st. Were you acquainted with the plaintiff and the defendants' testator?

Interrogatory 2d. Do you know of Joseph T. Hicks having hired of Samuel S. Downey any negro slaves for the year 1838; if yea, how

many negroes were hired; how much was Hicks to pay for them; and did he pay it, and how?

Interrogatory 3d. If the negro hire for 1838 was paid by a check on any bank or banks, please state whether at the date of said check the bank on which it was drawn was paying specie or not, and if it continued to pay for some time afterwards.

Interrogatory 4th. Where was the settlement for negro hire, if any, made, and when?

Interrogatory 5th. Did you ever hear Downey say anything about Dr. R. Hicks not having drawn the specie upon the check referred to in the 3d interrogatory; if yea, what was it?

Cross interrogatory 1st. Was the check of which you speak drawn at sight, or payable at a future day?

Cross interrogatory 2d. Have you a distinct remembrance of all that took place at the settlement you refer to, and are you sure that a check or checks were drawn, and that the settlement was made in that way?

Cross interrogatory 3d. Was any other person present at the conversation you refer to in your answer to 5th interrogatory?

Cross interrogatory 4th. Do you know that the railroad bank had as much as seventeen thousand dollars in specie, or would have paid that amount, on or about the 1st of January, 1839?

Cross interrogatory 5th. Do you know whether the check you have spoken of was presented and payment of it demanded or not; and if it was not paid, what arrangement was made about it, and by whom?

I waive notice, and consent that Nathan G. Bryson may take the deposition of the witness, subject to all legal exceptions for competency of the evidence.

A. BURWELL,
For S. S. DOWNEY.

STATE OF MISSISSIPPI,
Warren county.

I, Nathan G. Bryson, a justice of the peace in and for the county aforesaid, pursuant to the agreement in the case now pending in the United States circuit court, in the State of Mississippi, wherein Samuel S. Downey is plaintiff, and the executors of Joseph T. Hicks are defendants, herewith returned annexed; caused David Cordray, a witness for the defendants, to come before me on the day and at the place specified in said agreement, and having first duly sworn him the truth and whole truth to depose, he, on his oath, testified as follows:

To the 3d interrogatory. The Mississippi Railroad Bank, at Natchez, on which the check was given, was paying specie at the time said check was given, and continued so to do for several months afterwards.

To the 4th interrogatory. It was made at the shanty on the Mississippi railroad, about twenty miles from Natchez, some time between the 6th and 10th of January, 1839; I was present at the settlement referred to.

To the 5th interrogatory. When Downey came on to Natchez in the latter part of February, 1840, he said, if he had been in Natchez when the check was given, he would have drawn the specie, and censured Dr. John R. Hicks for not drawing the specie when he could have drawn it.

And the above examination having been carefully read to, and understood by, the deponent, and subscribed by him, it is certified under my hand and seal, this 30th day of June, A. D. 1845.

N. G. BRYSON, *J. P.* [SEAL.]

The parts of said deposition excluded from the jury, are in the foltowing words and figures:

To interrogatory 1st. I was acquainted with Joseph T. Hicks, and became acquainted with Downey in February, 1840.

To interrogatory 2d. I do not know that he had any hired, but I understood he was acting as agent for Downey during the year 1838; Hicks and Arnold had hired negroes of Joseph T. Hicks, as agent for Downey that year; I do not know how many there were; I do not know how much he was to pay for them; Joseph T. Hicks paid their hire about the first of January, 1839; they made a settlement with Dr. John R. Hicks, of North Carolina, who represented himself as agent of S. S. Downey, and paid him by a check on the Mississippi Railroad Bank, at Natchez, for about seventeen thousand dollars, as I was told by Dr. John R. Hicks, Joseph T. Hicks, and Major Arnold; this, I understood from the said parties, was a full settlement up to the first day of January, 1839, of Joseph T. Hicks's indebtedness as agent for Downey; Joseph T. Hicks had Downey's negroes referred to above in his possession near Natchez, when he hired them to Hicks and Arnold as agent for Downey; Joseph T. Hicks was a member of the firm of Hicks & Arnold.

Cross examination.

To cross interrogatory 1st. The check, I understood from Dr. John R. Hicks, Joseph T. Hicks, and Major Arnold, was drawn at sight; I never saw the check.

To cross interrogatory 2d. I never saw the check, but J. T. Hicks, John R. Hicks, and Major Arnold, told me that the check was given as stated above.

To cross interrogatory 3d. I do not recollect of any one being present at the time of the conversation; we were out on the railroad together at the time.

To cross interrogatory 4th. I cannot tell.

To cross interrogatory 5th. I understood from Dr. John R. Hicks that he could have drawn the specie from the bank, but Quitman prevailed on him to wait until the fall; it would cramp them from getting on with the road, and they would have plenty of money then; Dr. John R. Hicks told me that he had deposited the check in bank and received

a certificate of deposite for it; I never saw the check presented, and know nothing except what was told me by Dr. John R. Hicks, Joseph T. Hicks, and Major Arnold.

DAVID CORDRAY.

Sworn to and subscribed before me, this 30th day of June, A. D. 1840.

N. G. BRYSON, *J. P.*

The defendants then offered to swear A. W. Brien, as a witness; who being first sworn on his voir dire, said that he married one of the daughters of Sarah Cowan, and that his wife was now alive, and living with him as his wife; that his wife was the daughter of Sarah Cowan named in the will of Joseph T. Hicks; which will was then offered and read as follows, to wit:

Be it remembered, that on Monday, the 25th day of July, A. D. 1842, that being the 4th Monday of said month, a probate court was begun and held, in and for the county of Warren, at the court-house thereof, in the city of Vicksburg.

Present, the honorable B. Stringer, judge; Edward B. Scarbrough, sheriff; Alfred H. Rowlett, clerk.

Among the record of proceedings of said court, on the second day of said term, are the following, to wit: a writing purporting to be the last will and testament of Joseph T. Hicks, deceased, was this day produced in open court by Benjamin J. Hicks, one of the executors therein named, and proven by the oaths of Thomas Anderson, William R. Norcom, and John H. Moreley, the three subscribing witnesses thereto; and on motion, it is ordered, that the same be admitted to record ads probatem est. Which said last will and testament is in the words and figures following, to wit:

In the name of God, I, Joseph T. Hicks, being sick in body though sane in mind, do make and constitute this my last will and testament, revoking all others; to my sister-in-law Martha M. Hicks, wife of my brother Benjamin J. Hicks, and to the joint heirs of their bodies, I give and bequeath the following property, to wit, lot No. 131, in square 22, in the city of Vicksburg, on which the said Benjamin J. Hicks resides; also fractional lot No. 45, occupied by the said Benjamin as an office, together with a negro boy named Willis; also one entire fourth part of a lot of negroes, consisting of forty persons, old and young, residing on a plantation in the open woods, in the county of Warren, formerly the property of John Cowan, and now occupied by said Cowan as my agent; I give and bequeath to Mrs. Jane R. Hicks, wife of my brother James T. Hicks, and to the joint heirs of their bodies, one note of hand, drawn by the said James T. Hicks in my favor, for five thousand dollars; and I relinquish and devise to the said parties a deed of trust on the plantation and negroes of the said James T. Hicks, given to me by said Hicks to secure the payment of said note of hand; I give and bequeath unto Mrs. Sarah Cowan, wife of John Cowan, aforementioned,

and to the joint heirs of their bodies, excepting from this devise Martha M. Hicks, daughter of the aforesaid Sarah and John Cowan, the above plantation in the open woods, with the residue of the lot of negroes on said plantation not devised to Martha M. Hicks.

I will and bequeath to my dear wife and child the entire residue of my property, real and personal, with all debts of whatsoever character, either in bonds, notes, or open account, constituting them residuary legatees.

It is my wish, and I hereby expressly direct, that no division of the lot of negroes heretofore mentioned, and residing on the open woods plantation, shall be made until the sum of eight thousand dollars, more or less, be paid to William D. Simms, or his heirs or assigns, it being the residue of the moneys due him on the purchase of said negroes, and not then unless assented to by the aforesaid John Cowan and Sarah, his wife.

I constitute and appoint my brothers, John R. and Benjamin Hicks, executors, and my beloved wife, Mary M. Hicks, executrix, of this my last will and testament, desiring the probate court to require no security at their hands for the faithful performance of the duties herein assigned them.

In testimony whereof I have set my hand and seal, this eleventh day of June, A. D. one thousand eight [hundred] and forty-two.

JOSEPH T. HICKS. [SEAL.]

Witnesses:
THOS. ANDERSON,
W. R. NORCOM,
JOHN H. MOSELY.

THE STATE OF MISSISSIPPI,
Warren county, ss:

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certify, that the foregoing order of court, admitting to probate the last will and testament of Joseph T. Hicks, deceased, together with said will, are truly copied from the records in my office.

Given under my hand and seal of office, this 25th day of October, A. D. 1842.

[L. S.]

A. H. ROWLETT, *Clerk*.

The witness stated, that some time before the commencement of this suit, he and his wife had received $1500 dollars, in full of his wife's share of said estate under said will, and released the same to Mrs. Cowan, and had now no interest in the suit. The plaintiff objected to the introduction of said Brien's testimony to the jury on the ground of interest, but the objection was overruled by the court; to which the plaintiff then and there excepted. The said witness then stated in evidence to the jury that some time in the month of November or December, 1842, or spring of '43, the plaintiff was frequently at the house

of defendant, Benjamin J. Hicks, where witness boarded; that many conversations were held between the plaintiff and said Hicks, which the witness did not hear any part of, and many which the witness heard but could not recollect; that one morning, witness, Benjamin J. Hicks, and the plaintiff, went out from the breakfast room together, to a small porch in front of the house, and the plaintiff being then about to start for his home in North Carolina, observed to Benjamin J. Hicks, that he had no demands against the estate of Joseph T. Hicks, except a small note for $450, which was all the business plaintiff had now with the estate, and which note plaintiff urged the defendant to pay; and said Hicks refusing to do so, plaintiff said they could have a friendly suit about it, or words to that effect; the note in the declaration, he thinks, is the same. The defendants then offered an account book, kept by Joseph T. Hicks, and said Brien testified he was acquainted with the handwriting of John R. Hicks; that he had seen him write, and believed certain portions of said book were in his handwriting; and then the defendants offered to read said portions of said book, as follows:

400.
'77

Samuel S. Downey, Dr.

1837.				
May 13	To	7 check shirts, a $1 12½		$7 87½
	"	7 cotton shirts, a $1 00		7 00
24	"	14 pairs of shoes, a $1 25		17 50
25	"	21 yards of sheeting, for women, 14 cts		2 94
	"	42 yards check cloth		5 88
	"	thread for making same		30
June 20	"	7 pairs of shoes, for women, $1 25		8 75
	"	14 pairs of pantaloons, a $1 12		15 75
	"	6 yards of cloth, to finish women dresses, 14 cts		91
August -	"	coffin, grave, and hearse, for Joana		10 00
Oct. 7	"	7½ yards cloth, for Anna and Dowsey, 14 cts		1 05
	"	4 yards cloth, for Anna and Dowsey, 14 cts		56
Nov. 7	"	14 suits of clothing, for men and boys, $6 50		91 00
	"	bill for board in Natchez.		
Dec. 2	"	21 pairs of shoes, a $1 25		26 25
1837.				
Feb. 11	"	14 strong Lowell shirts, at $1 12½		15 75
	"	62 yards of Lowell, for women's dresses, 20 cts		12 40
May 22	"	14 Lowell shirts, a $1 12½		15 75
July 16	"	33¾ yards of check cloth, a 25 cts		8 37½
Nov. 14	"	41½ yards of Lowell, for men's shirts, 22 cts		9 13
	"	17½ yards of Lowell, for women, 22 cts		3 85
May 22	"	24 yards of Lowell, for women, 20 cts		4 80
Nov. 14	"	42 yards of Lowell, for women's dresses, 22 cts		9 24
Dec. 14	"	14 suits of sattinet pants and coats, $7		98 00
1838.				
April 27	"	42 yards of Lowell, for men, 25 cts		10 50
"	"	42¼ [yards] for men's and boys' pants, 25 cts		10 56
"	"	thread for making		1 00
1837.				
Nov. 10	"	23 pairs of shoes, for winter, at $1 50		34 50
March 22	"	cash to J. Green, per order		1,200 00
April 27	"	5¾ yards Lowell, for Harrod, a 25 cts		1 44
	"	8 yards Lowell, for Mahala, a 25 cts		2 00
	"	14 pairs extra shoes, a $1 50		21 00
November	"	25 pairs brogans, a $1 50		37 50
	"	15 blanket coats, a $6 00		90 00
	"	44½ yards of Lowell, 20 cts		14 60
	"	41 yards of jeans, at 70 cts		28 70
	"	boarding in Natchez, in 1836		141 00
	"	board for three negroes, from Oct. 7 to April 1, 1838		36 00
			$2,011 60	2,011 60
1839.				
Jan. 1	"	balance due S. S. Downey	9,851 78	$9,854 18
1837.				
Dec. 14	,,	1 suit for Harrod, (omitted)		$7 00
1838.				
April -	"	making 15 suits men's clothing for summer, 1838		15 00
	"	making 10 suits for women, a 75 cts		7 50
November	"	making 15 pants and shirts for men, winter		15 00
	"	to 11 winter suits for women, a 75 cts		7 50
				52 00
1839.				
Jan. 1	"	balance due		9,799 78
				$9,851 78
Jan. 10	"	cash paid in full up to 1st January		$9,799 78

Contra, Cr.

1836.		
June 3	By cash received from W. & Mills	$574 00
July 7	" cash received from Wellman & Mills	575 00
Sept. 14	" cash received from Wellman & Mills	200 00
November	" cash received from Wellman & Mills	252 00
1837.		
Jan. 7	" two months hire of negroes	722 00
March 7	" two months hire of negroes	722 00
May 7	" two months hire of negroes	722 00
	" balance from Wellman & Mills	1,049 38
July 7	" two months hire of negroes	722 00
Sept. 7	" two months hire of negroes	722 00
Oct. 7	" one month hire of negroes	361 00
1838.		
April 1	" cash received of Arnold, Dickey & Co., and O'Reilly, for 4 months and 23 days, for hire of negroes from 7th of October, 1837, to April, 1st, 1838	1,573 00
" 1	" cash received of Arnold & Jack, for hire of Harrod and Mahala, from 1st of January, 1838, to 1st of April, 1838	105 00
1839.		
Jan. 4	" cash received of Hicks & Arnold, for hire of negroes, from 1st of April, 1838, to 1st of January, 1839, Harrod and Mahala included	3,564 00
		$11,863 38
1839.		
Jan. 1	By balance of account brought forward	$9,851 78
1839.		
Jan. 1	By balance due	$9,799 78

To the reading of which in evidence to the jury the plaintiff objected, but the court overruled the objection and permitted the same to be read; and to this decision of the court the plaintiff then and there excepted.

The defendants then read the deposition of Henry J. Arnold, as follows, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Circuit court, U. S.

Interrogatories to be propounded to Henry J. Arnold by defendants.

1. Will you state whether you are acquainted with the plaintiff, Samuel S. Downey.

2. State if you saw said Downey and John R. Hicks at any time in State of Mississippi.

3. Had you in the month of March, 1840, or at any other time, any conversation with S. S. Downey about the hire of his negroes in Mississippi, and who was his agent, &c.? If you had any such conversation, please state it, and when and where it took place.

4. If you had any conversation with Downey, did he or not speak of the certificates of deposites brought to him by John R. Hicks, or Hicks and Arnold; if so state whose property he said it was.

5. State whether said Downey did not tell you of, or speak of, investing the certificate in cotton; and state, if yea, the reason he did not so invest it.

6. State all that Downey said to you at any time during the year 1840, in relation to said certificate; state it fully.

7. If you know of anything else, please state it.

Cross interrogatories to be propounded to Henry J. Arnold.

1st. How old are you; what relation are you to Andrew Arnold?

2d. If in answer to the 3d question you state that you had a conversation with Samuel S. Downey, please further to state whether you were called upon to notice, and did particularly notice, the whole of said conversation; whether the same was addressed to you; where it occurred; who were present besides yourself; and whether you heard the whole of the conversation that took place upon that occasion; whether you were present at the commencement, and continued present until the end of it.

3d. Where have you resided since the year 1840, and how many conversations have you had with Andrew Arnold about the subject of your examination?

4th. If you state in answer to the 4th question that Downey told you whose property the certificate was, please also to state where that was said, who was present, when, and whether or not you heard, and now remember, and state, the whole of the conversation, and whether it was then explained when and under what circumstances Mr. Downey acquired property in the certificate, and what property he claimed in it, if you say he claimed any.

5th. If Mr. Downey spoke of investing the certificate in cotton, did he then say that Joseph T. Hicks was not responsible to him for the amount of it or for his negro hire?

6th. Have you stated anything which is not of your own knowledge, but which you merely heard from others? If you have, point out such statements.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Circuit court, U. S.

I, William H. Brown, clerk of said court, do hereby certify, that the foregoing interrogatories and cross interrogatories are true and complete copies of the original on file in my office in a suit wherein Samuel S. Downey is plaintiff, and Joseph T. Hicks's executors are defendants.

In testimony whereof I have hereunto set my hand and affixed the [L. S.] seal of said court at Jackson, the 15th day of September, 1848.

W. H. BROWN, *Clerk*,
Per CH'S H. ROGERS, *D. C.*

UNITED STATES OF AMERICA,
Southern district of Mississippi, to wit:

The President of the United States, to A. L. Robinson, greeting:

Know ye, that trusting to your fidelity and provident circumspection in diligently examining Andrew Arnold and Henry J. Arnold in a certain cause now pending in the circuit court of the United States, for the district aforesaid, wherein Samuel S. Downey is plaintiff, and Joseph T. Hicks's executors are defendants, you are requested, at such certain days and places as you shall appoint, to call and the cause said witnesses to come before you, and them diligently examine on oath, and their examination into the circuit court aforesaid, you distinctly and plainly set, together with this writ enclosed, with all convenient speed.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at the first
[L. S.] Monday in May, in the year of our Lord one thousand eight hundred and 48, and in the 72d year of the independence of the United States of America.

Issued the 15th day of September, 1848.

W. H. BROWN, *Clerk*,
Per CHAS. H. ROGERS, *D. C.*

The execution of this commission appears in a certain schedule hereto annexed.

A. L. ROBINSON.

Pursuant to the annexed commission, to me directed from the southern district court of Mississippi, directing and empowering me to take the depositions of Andrew Arnold and Henry J. Arnold, citizens of the borough of Kittanning, Armstrong county, Penn'a, to be read in evidence on the trial of a suit pending in said court, wherein Samuel S. Downey is plaintiff, and Joseph T. Hicks's executors are defendants; I, the undersigned, an acting justice of the peace of the borough of Kittanning, in said county and State aforesaid, have caused the said Andrew Arnold and Henry J. Arnold to come before me in my office in said borough, on the 11th, 12th, and 13th days of October, in the year of our Lord 1848, they being of full age, and first being duly sworn according to law to depose the truth, the whole truth, and nothing but the truth, in the premises; and, being so qualified by me, each deposeth and saith the facts set forth in each of their respective depositions, to which each of them have signed their respective names.

To the defendants' 1st interrogatory I answer:

I am acquainted with Samuel S. Downey, the plaintiff in this suit.

2d. I saw Samuel S. Downey and John R. Hicks at Washington, in the State of Mississippi, in the month of March, 1840.

3d. In the month of March, 1840, Samuel S. Downey and John R. Hicks came to the residence of Hicks and Arnold, at Washington,

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in the State of Mississippi. At that time I heard Samuel S. Downey say that Joseph T. Hicks was his agent in hiring his negroes in Mississippi.

I afterwards, during the same month, had a conversation with Samuel S. Downey, at the forks of the road near Natchez, about his negro hire, and he said he had sent John R. Hicks, of North Carolina, as his agent, to come to Mississippi and settle with Joseph T. Hicks, his former agent, for all his (Downey's) negro hire, up to January, 1839; and that he was perfectly pleased with all Joseph T. Hicks's acts as his agent, but was much disappointed with John R. Hicks for not drawing the money out of bank when it was par, and he did not do it.

4th. I heard Samuel S. Downey speak of the certificate of deposite that he had received of John R. Hicks, as his agent, and which John R. Hicks had received from Joseph T. Hicks, his former agent, for the hire of Downey's negroes; and at that time Samuel S. Downey spoke of the certificate as his own property. The certificate was dated early in January, 1839.

5th interrogatory. In a few days we removed from Washington to what is called the forks of the road near Natchez, to the old negro quarters. Samuel S. Downey and John R. Hicks lodged part of the time at the quarters of Hicks and Arnold. I then heard Samuel S. Downey and John R. Hicks say that they thought that the best thing that they could do with the proceeds of their certificates of deposite would be to invest them in cotton. Afterwards they said they would not do it, as the Mississippi Railroad Company talked of giving them a mortgage on real estate for the amount of the certificates; and they, Downey and John R. Hicks, were then, with some of the directors of the bank, for days trying to negotiate the matter; but I afterwards understood from them that they were not able to effect the arrangement; and I also heard Samuel S. Downey say, that he would bring suit against the Mississippi Railroad Company for the amount of his and Col. Amis's certificates of deposite before he would leave Mississippi. This was in the fore part of March, 1840.

6th. I have already stated all that I recollect about the matter.

7th. I have already answered this interrogatory in my answer to the sixth.

To the plaintiff's cross interrogatories the witness answers as follows:

1st cross interrogatory on the part of the plaintiff witness answers:

I was 28 years of age the 16th of April, 1848. I am the son of A. Arnold.

2d cross interrogatory of the plaintiff:

I was never called upon by any one to notice the conversations referred to; the conversation at Washington took place I think in the presence of Samuel S. Downey, John R. Hicks, Joseph T. Hicks, and David Cordery, and myself; it was not addressed to me personally; I cannot say that I was present at the commencement of the conversa-

tion, or that I remained in the company until it closed. The conversation referred to in my answer to the 3d interrogatory took place between Samuel S. Downey and myself, after we had retired to bed; we slept in the same room, and the conversation was commenced by him; there was no other person present.

3d. I have resided in Kittanning, Armstrong county, Pennsylvania, since 1840.

I never had any conversations with my father about what I have here testified, until after my father was sued in Pittsburgh for the amount of the same certificate of deposite. I then told my father what I had heard and what I knew about it, and may have talked about it with him two or three times.

4th cross interrogatory of the plaintiff:

I believe the conversation referred to in my answer to the 4th interrogatory took place at Washington, Mississippi, in March, 1840, Samuel S. Downey, John R. Hicks, and Joseph T. Hicks, Captain David Cordery, and myself were present; cannot state whether my father was present or not.

I heard, and now remember, what I have stated; I understood from Samuel S. Downey that he had received the certificate for the hire of his negroes, and that Downey claimed the certificate as his own individual property. I believe that I have stated all of the conversations that took place in my presence.

5th cross interrogatory of the plaintiff:

Samuel S. Downey, at the time he spoke of investing the certificate in cotton, did not say any thing about the liability of Joseph T. Hicks being for the amount of the certificate of deposite, or the negro hire.

6th cross interrogatory of the plaintiff:

I have stated nothing but what I know of my own knowledge, to the best of my recollection. HENRY J. ARNOLD.

A. L. ROBINSON.

I, the undersigned commissioner, certify, that the above depositions of Andrew Arnold and Henry J. Arnold were respectively sworn to and subscribed in my presence, they having been first carefully read over to the said witnesses, by whom they were respectively well understood and approved; all which was done in my presence, at the times and place stated in the caption hereof, and the whole of them, save only the signatures of the witnesses, are in the handwriting of the said commissioner. The undersigned doth further certify, that he is not of kin to either party; that he has no legal interest in the suit, nor is [he] in anywise interested therein. The undersigned doth further certify, that after the same was sworn to and subscribed, he caused them to be sealed up, without being in anywise altered, and addressed them to the clerk of the proper court; the whole of the address, &c., being in the proper handwriting of the undersigned.

Witness my hand and seal this 13th day of October, A. D. 1848.

A. L. ROBINSON, [L. S.]
Justice of the peace.

The plaintiff then produced and tendered the original certificate of deposite referred to, and read the same, as follows:

BANK MISSISSIPPI RAILROAD COMPANY,
No. 103. *Natchez, 10th January*, 1839.

Hicks & Arnold have deposited in this bank the sum of nine thousand seven hundred and ninety-nine $\frac{89}{100}$ dollars, for the use, and payable only to the order, of Samuel S. Downey, endorsed on this certificate on the 1st of November next, with interest, at 8 per cent. per annum. $9,799.89.

E. F. BRASIER, *Cashier*.

[Endorsed on the face with red ink.]

Number one hundred and three.

R. McCONNELL, *Teller*.

Nine thousand seven hundred and ninety-nine $\frac{89}{100}$ dollars, payable 1st November with 8 per cent. interest.

The plaintiff then read the following depositions of Eli Montgomery, A. Buckner, John R. Hicks:

No. 1.

UNITED STATES OF AMERICA,
Southern district of Mississippi,
City of Natchez, sct:

Be it remembered, that, on the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and forty-five, before me, Charles A. Lacoste, a commissioner, duly appointed on the 31st day of May, A. D. 1842, by the circuit court of the United States, in and for the southern district of Mississippi, according to an act of Congress "for the more convenient taking of affidavits and bail in civil cases depending in the circuit court of the United States," passed February 20, 1812; and an act in addition thereto, passed March 1st, 1817; and an act "to establish the judicial courts of the United States," passed September 24th, 1789, personally appeared Eli Montgomery, a person of sound mind and lawful age, a witness for the plaintiff in a civil suit now depending in the circuit court of the United States, in and for the southern district of Mississippi, wherein Samuel S. Downey is plaintiff, and Benjamin J. Hicks, executor, and Mary M. Hicks, executrix, of Joseph T. Hicks, deceased, are defendants; and the said witness, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in said suit, did then and there depose as follows, viz:

I am acquainted with Samuel S. Downey, the plaintiff, and was acquainted with the late Joseph T. Hicks. I am not acquainted with Benjamin J. Hicks, or Mary M. Hicks, the defendants.

I was duly elected the president of the "Mississippi Railroad Com-

pany," at Natchez, State of Mississippi, on or about the 5th day of March, A. D. 1840, and have continued to hold said office, and act in said capacity of president, to the present day.

It appears from the book of said company, which I have examined, that a certificate of deposite was issued by said company on the tenth day of January, 1839, payable on the first day of November following, to the order of Samuel S. Downey, for the sum of nine thousand seven hundred and ninety-nine dollars and eighty-nine cents, (9,799 89,) bearing interest from its date at eight per cent. per annum, purporting that said amount had been deposited in said company by Hicks and Arnold. During the month of March, 1840, after I had assumed the presidency of said company, I frequently saw said certificate of deposite in the possession of Samuel S. Downey, the plaintiff in this case, in the city of Natchez aforesaid.

A negotiation of some two weeks duration occurred in Natchez, during the month of March, 1840, and whilst I was president of said company, in relation to said certificate of deposite, between the said Samuel S. Downey, the plaintiff in this suit, and Joseph T. Hicks, now deceased, and Andrew Arnold, which two last named persons composed the firm of Hicks & Arnold, referred to above. I was present at various interviews between said parties, in the course of which I understood them all to admit the following facts: that said Hicks & Arnold had fallen in debt to said Samuel S. Downey to a large amount of money for the hire of certain slaves; that said certificate of deposite had been sent by said Hicks & Arnold to said Downey in North Carolina, on account of their said debt to him; that said Downey had declined and refused to receive or accept the said certificate of deposite in payment or satisfaction of any part of said debt.

The said Hicks & Arnold repeatedly admitted and acknowledged, in my presence and hearing, that they considered and held themselves bound to said Downey for the amount of money called for by said certificate of deposite, in case it were not paid by said Mississippi Railroad Company, in the same manner and to the same extent as if they had not sent the said certificate of deposite to him. And Hicks & Arnold were very urgent upon me, as the president of the said company, to make some arrangements for paying said certificate of deposite, so that they (Hicks & Arnold) might be released and discharged from their obligation to make good the amount of the said certificate to the said Downey.

No arrangements have been made to this day for payment of the said certificate of deposite. Said certificate was not issued on actual deposite of money by Hicks & Arnold in said company, but originated in the following manner: The Mississippi Railroad Company were indebted in a large sum to Hicks & Arnold, for work and labor done and performed by them upon the railroad of the company, and delivered the above described and other certificates of deposite to said Hicks & Arnold in settlement. The certificates were made payable on the first of November, 1839, at which date it was expected the company would have

the means to meet them; and they were made to bear the lawful interest of the State at that time. The company, however, had not the means to pay said certificate, issued to the order of Samuel S. Downey, at maturity, according to the books of the bank, nor have they been able to pay it any time since the date of said maturity.

ELI MONTGOMERY.

UNITED STATES OF AMERICA,
Southern district of Mississippi,
City of Natchez, sct:

I, Charles A. Lacoste, a commissioner duly appointed on the 31st day of May, A. D. 1842, by the circuit court of the United States, for the southern district of Mississippi, according to an act of Congress, "for the more convenient taking of affidavits and bail in civil cases depending in the circuit court of the United States," passed February 20, 1812; and an act in addition thereto, passed March 1st, 1817; and an act "to establish the judicial courts of the United States," passed September 24th, 1789; do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witness lives in Natchez, State of Mississippi, more than one hundred miles from Jackson, State of Mississippi, the place of trial of the cause for and in which said deposition is taken and is necessary.

I do further certify, that no notification was made out and served on the defendants, or adverse parties, agent or attorney, to be present at the taking of the deposition, and to put interrogatories, if he or they may think fit; and that no notification of the time and place of taking the said deposition was made out and served on said defendants or adverse parties, because neither the said adverse parties, nor any attorney or agent of said parties, was, at the time of taking said deposition, within (100) one hundred miles of the said city of Natchez, the place of taking said deposition.

I further certify, that, on this twenty-fifth day of April, A. D. 1845, I was attended by the witness, who is of sound mind and lawful age; and the witness was by me carefully examined, and cautioned, and sworn to testify the whole truth; and the deposition was by me reduced to writing in the presence of the witness; and, after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of sealing up, directing, and forwarding the same, with my own hand, to the court for which the same was taken.

I further certify, that I am not of counsel or attorney to either of the parties in said deposition and caption named, or in any way interested in the event of the said civil cause named in the caption.

In testimony whereof I have hereunto set my hand and seal.

CH. A. LACOSTE, [SEAL.]
U. S. commissioner, circuit court, U. S., for the southern district of Mississippi.

UNITED STATES OF AMERICA,
Southern district of Mississippi, city of Natchez, sct:

Be it remembered, that, on this seventeenth day of April, in the year of our Lord one thousand eight hundred and forty-six, before me, Charles A. Lacoste, a commissioner duly appointed on the 31st day of May, A. D. 1839, by the circuit court of the United States, in and for the southern district of Mississippi, according to an act of Congress "for the convenient taking of affidavits and bail in civil cases depending in the circuit courts of the United States," passed February 20, 1812; and an act in addition thereto, passed March 1st, 1817; and an act "to establish the judicial courts of the United States," passed September 24th, 1789, personally appeared at my office, in Natchez, Eli Montgomery, a person of sound mind and lawful age, a witness for the defendants in a civil suit now depending in the circuit court of the United States, in and for the southern district of Mississippi, wherein Samuel S. Downey is plaintiff, and Benjamin J. Hicks and Mary M. Hicks, executor and executrix of Joseph T. Hicks, deceased, are defendants; and the said witness, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matter in controversy in said suit, did then and there depose as follows, in answer to interrogatories propounded to him in person by Richard M. Gaines, esq., of counsel for defendants, a certified transcript of which interrogatories is hereto appended, and marked A.

To 1st interrogatory witness answers as follows:

I did know, at the time said interviews took place, that Hicks & Arnold owed S. S. Downey for negro hire accrued since 1st January, 1839; but I did not know of the existence of the bond for near $5,000, which is said to be evidence of that debt.

To the 2d interrogatory he answers:

I was informed of the said transfer by the parties at one of the two last interviews I had with them. They also stated, at the same time, that the transfer was made to secure to Downey and others the negro hire accrued since 1st January, 1839, and that the object and intention in view, when making the transfer, was to enable S. S. Downey to bring suit upon the claim assigned in the federal court.

To the 3d interrogatory witness answers:

I saw the original transfer, for the first time, last fall, in the possession of Aylette Buckner, esq. When I gave my deposition in this case, in April, 1845, I had no other knowledge or recollection of the object and intention of the transfer thus as expressed in my preceding answer. I cannot say whether the said "exhibit C" is or not a true copy of the said original transfer. I believe said "exhibit C" is in the handwriting of A. Buckner.

To the 4th interrogatory he answers:

I can state positively that said acknowledgment and admissions of Hicks & Arnold had reference, not only to the certificate of deposite, but also to the other claim upon [the] Mississippi Railroad Company, transferred to secure the negro hire since the 1st January, 1839.

This fact is impressed upon my mind by the circumstance that Joseph T. Hicks and Andrew Arnold applied, at that time or thereabouts, to the board of directors of said company (of which I was president) for a mortgage to secure the whole amount of the claims upon said company, as well the certificate of deposite as the hire due since 1st January, 1839; said Hicks and Arnold stating, at the same time, that if they could procure such mortgage, to be executed by the company, S. S. Downey would receive it in full satisfaction of all his claims upon them, (Hicks and Arnold;) otherwise that they (Hicks and Arnold) would have to pay him (Downey) the money, if the company failed to do so.

To the 5th interrogatory he answers:

I was not under such impression.

To the 6th interrogatory he answers:

I cannot have confounded the acknowledgments of liability on the part of Hicks and Arnold, as they had distinct reference to both said debts.

To 7th interrogatory he answers:

As before stated, I knew of another debt owing for negro hire beside the certificate of deposite, but did not know the precise amount of it.

To the 8th interrog. he answers:

The condition and prospects of the said company, in March, 1840, were materially different from what they were in January, 1839.

In January, 1839, the company paid specie for all its liabilities. In March, 1840, those liabilities were at a discount of forty per cent. below specie. The notes and liabilities of the company began to depreciate on the 7th of February, 1840, except the notes due on demand; the amount of which, however, was small, comparatively speaking. These demand notes the company continued to pay specie for until some time in April, 1840, when it stopped specie payments altogether.

To the 9th interrog. he answers:

They did.

And to cross interrogatories propounded to him by William H. Stewart, esq., as proxy for attorneys of the plaintiff, (of which cross interrogatories a certified transcript is hereto annexed, marked B,) witness answers as follows, viz:

To 1st cross interrog. he answers:

I have never heard of more than one certificate of deposite of the Mississippi Railroad Company in favor of S. S. Downey; nor have I been able, upon examination of the books of the said company, to [find] any other besides the one for $9,799 89.

To the 2d cross interrog. he answers:

The certificate of deposite for $9,799 89 is the only one sued on in the federal court by S. S. Downey.

To 3d cross interrog. he answers:

The conversations had reference to the hire due previously to the period of said conversations. The admissions of liability referred to all debts due up to that time, by Hicks and Arnold, to Downey, for

negro hire. But of the existence of their own bonds given to Downey I knew nothing then.

To the 5th cross interrog. he answers:

The admission of liability related to both debts, as well to the certificate of deposite as to the hire, previous to the time of the conversation.

To the 6th cross interrogatory he answers:

What I have stated above on information was derived from Hicks and Arnold, personally, or from their conversations with S. S. Downey in my presence or hearing, except when otherwise mentioned above. All else I stated of my own knowledge.

ELI MONTGOMERY.

N. B.—Richard M. Gaines, esq., counsel for defendants, objected to the 4th cross interrogatory *be* propounded to witness, because of its being "illegal;" which objection overruled, and now submits to the court.

CH. A. LACOSTE, *Comm'r.*

A.

SAMUEL S. DOWNEY
vs.
BENJAMIN J. HICKS and Mary M. Hicks, ex'r and ex'rix of Joseph T. Hicks, dec'd.

In the circuit court of the United States, for the southern district of Mississippi.

Interrogatories in the nature of cross interrogatories, propounded by Richard M. Gaines, esq., attorney for the defendants, to Eli Montgomery, a witness in the above case, whose deposition was heretofore taken by the plaintiff.

1st interrogatory. At the several interviews between Samuel S. Downey, Joseph T. Hicks, and Andrew Arnold, you stated in your deposition, taken in this case, that you understood them all to admit certain facts, and, amongst others, that a certain certificate of deposite, mentioned in your deposition, was sent by Hicks & Arnold to said Downey in payment of negro hire; and also that Hicks & Arnold repeatedly admitted in your presence that they considered themselves bound for the amount of said certificate, in case it was not paid by the bank.

We wish you to state whether, at the time you gave the above deposition, you were aware of the fact that Hicks & Arnold were indebted, at the time said interviews took place, to said Samuel S. Downey for negro hire accruing since January 1st, 1839, and due by bond to said Downey for near $5,000.

2d interrogatory. Were you aware, or did you know, at said interviews, that Hicks & Arnold had transferred to Downey an account or

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debt due to them from the Mississippi Railroad Company to secure the payment of the negro hire aforesaid, since 1st Janunry, 1839?

3d interrogatory. Look at "exhibit C," filed with interrogatories propounded to A. Buckner, a witness in this case, whose deposition was taken yesterday before this commissioner, purporting to be a copy of the paper by which said transfer was made; and state whether you ever knew of it, or if you did, whether you recollect it at the time you gave your deposition; is said "exhibit C" a true copy of the original transfer, and by whom was said copy made?

4th interrogatory. Can you now state positively whether the admissions or acknowledgments of Hicks & Arnold that they felt bound to pay Downey, if the bank did not, had reference to the certificate of deposite, or to the last named debt of the Mississippi Railroad Company, transferred to him as aforesaid, to secure the debt of $5,000?

5th interrogatory. When you spoke of the admissions and acknowledgments of Hicks & Arnold, were you not under the impression that there was no other indebtedness for negro hire than that connected with said certificate of deposite?

6th interrogatory. If Hicks & Arnold owed to Downey a debt of $5,000 for negro hire, accruing since 1st January, 1839, and if they transferred, to secure this, a debt due them from the Mississippi Railroad Company, when they acknowledged their liability to pay, if the bank did not; may this not have had reference to this debt; and may you not, at this distance of time, have confounded this with the certificate of deposite?

7th interrogatory. May not your impressions, that said acknowledgments applied to said certificate of deposite, have arisen from the fact that you did not know, or had forgotten, the above indebtedness of $5,000?

8th interrogatory. In March, 1840, was the condition and prospects of the Mississippi Railroad Company materially different from what they were in January, 1839; and when did the notes and liabilities of said bank begin to depreciate?

9th interrogatory. Did or not all the conversations and acknowledgments, of which you have spoken in your answer to the foregoing interrogatories, take place subsequently to the 5th day of March, 1840?

I certify the above and foregoing to be a correct transcript of the interrogatories propounded to the said witness (Eli Montgomery) by defendants' counsel, R. M. Gaines, esq.

CH. A. LACOSTE,
Commissioner.

B.

SAMUEL S. DOWNEY
vs.
Executor and executrix of JOSEPH. T. HICKS, deceased.

In circuit court of the United States, for southern district of Mississippi

[REC. CXLVII, D. T. 1851.]—12

Cross interrogatories propounded by William H. Stewart, esq., proxy counsel for Messrs. Mason & Burwell, attorneys for the plaintiff, to Eli Montgomery, a witness in the above case.

1st cross interrogatory. Was there or not more than one certificate of deposite made by Hicks & Arnold, or at their instance, in favor of, and payable to, Samuel S. Downey; or did you or not, at the conversations referred to, hear of more than one such?

2d cross interrogatory. Was there or not more than one certificate of deposite, on which suit was brought in the federal court at Jackson, in the name of Downey; and is or not the certificate referred to in your previous deposition the same on which said suit was brought?

3d cross interrogatory. In whose handwriting is the paper referred to in the 3d cross interrogatory of defendants?

4th cross interrogatory. Did you, or not, understand the admission of liability to pay, if the bank did not, of which you have spoken in your deposition, to hire due previously to the date of said conversations, or to hire due thereafter; and did you, or not, understand said admission to refer to Hicks and Arnold's liability to pay their own bonds to Downey for negro hire, or to their liability to pay a note or certificate of deposite, or some other evidence of debt, made by the railroad bank some time previous to said conversations, and which Downey had previously received from Hicks and Arnold, or one of them?

5th cross interrogatory. Did the admission of liability to pay, of which you have given evidence, refer to a debt already held by Downey against the railroad bank, or to one in which he was about to become interested, by receiving it as collateral security for other debts due by Hicks & Arnold?

6th cross interrogatory. Are any of the matters stated by you to interrogatories of defendants, stated on information, and not within your own knowledge? If any are, please to distinguish such from what you state of your own knowledge.

I certify the above and foregoing to be a correct transcript of the cross interrogatories propounded to the witness, Eli Montgomery, by plaintiff's proxy counsel, Wm. H. Stewart, esq.; also, that R. M. Gaines, esq., attorney for defendants, objected to the 4th cross interrogatory as illegal; which objection was overruled by—

CH. A. LACOSTE, *Com'r.*

UNITED STATES OF AMERICA,
Southern district of Mississippi, city of Natchez, sct:

I, Charles A. Lacoste, a commissioner, duly appointed on the 31st day of May, A. D. 1842, by the circuit court of the United States, for the southern district of Mississippi, according to an act of Congress "for the more convenient taking of affidavits and bail in civil cases, depending in the circuit courts of the United States," passed February 20th, 1812; and an act in addition thereto, passed March 1st, 1817; and an act "to establish the judicial courts of the United States, passed Sep-

tember 24th,1789; do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witness lives in Natchez, State of Mississippi, more than one hundred miles from Jackson, State of Mississippi, the place of trial of the cause for and in which said deposition is taken, and is necessary.

I further certify, that the said deposition was taken at my office in Natchez, on this day, according to notice and agreement of counsel in writing, which is attached to the deposition of A. Buckner, in this cause, taken before me yesterday, and which is marked A; and that R. M. Gaines, for defendants, and that Wm. H. Stewart, for plaintiff, were present, and personally interrogated the witness, E. Montgomery.

I further certify, that on this seventeenth day of April, A. D. 1846, I was attended by the witness, who is of sound mind and lawful age, and the witness was by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witness; and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of sealing up, directing, and forwarding the same, with my own hand, to the court for which the same was taken.

I further certify, that I am not of counsel or attorney to either of the parties in said deposition and caption named, or in any way interested in the event of the said civil cause named in the caption.

In testimony whereof I have hereunto set my hand and seal.

CH. A. LACOSTE, [SEAL.]
U. S. comm'r, circuit court, U. S., for the Southern district of Mississippi.

UNITED STATES OF AMERICA,
Southern district of Mississippi,
City of Natchez, sct:

Be it remembered, that, on this twenty-sixth day of April, in the year of our Lord one thousand eight hundred and forty-five, before me, Charles A. Lacoste, a commissioner duly appointed on the 31st day of May, A. D. 1842, by the circuit court of the United States, in and for the southern district of Mississippi, according to an act of Congress "for the more convenient taking of affidavits and bail in civil cases depending in the circuit courts of the United States," passed February 20, 1812; and an act in addition thereto, passed March 1st, 1817; and an act "to establish the judicial courts of the United States," passed September 24th, 1789; personally appeared Aylette Buckner, a person of sound mind and lawful age, a witness for the plaintiff in a civil suit now depending in the circuit court of the United States, in and for the southern district of Mississippi, wherein Samuel S. Downey is plaintiff, and Benjamin J. Hicks, executor, and Mary M. Hicks, executrix, of Joseph T. Hicks, deceased, are defendants; and the said witness being by me first duly sworn to testify the truth, the whole

Cross interrogatories propounded by William H. Stewart, esq., proxy counsel for Messrs. Mason & Burwell, attorneys for the plaintiff, to Eli Montgomery, a witness in the above case.

1st cross interrogatory. Was there or not more than one certificate of deposite made by Hicks & Arnold, or at their instance, in favor of, and payable to, Samuel S. Downey; or did you or not, at the conversations referred to, hear of more than one such?

2d cross interrogatory. Was there or not more than one certificate of deposite, on which suit was brought in the federal court at Jackson, in the name of Downey; and is or not the certificate referred to in your previous deposition the same on which said suit was brought?

3d cross interrogatory. In whose handwriting is the paper referred to in the 3d cross interrogatory of defendants?

4th cross interrogatory. Did you, or not, understand the admission of liability to pay, if the bank did not, of which you have spoken in your deposition, to hire due previously to the date of said conversations, or to hire due thereafter; and did you, or not, understand said admission to refer to Hicks and Arnold's liability to pay their own bonds to Downey for negro hire, or to their liability to pay a note or certificate of deposite, or some other evidence of debt, made by the railroad bank some time previous to said conversations, and which Downey had previously received from Hicks and Arnold, or one of them?

5th cross interrogatory. Did the admission of liability to pay, of which you have given evidence, refer to a debt already held by Downey against the railroad bank, or to one in which he was about to become interested, by receiving it as collateral security for other debts due by Hicks & Arnold?

6th cross interrogatory. Are any of the matters stated by you to interrogatories of defendants, stated on information, and not within your own knowledge? If any are, please to distinguish such from what you state of your own knowledge.

I certify the above and foregoing to be a correct transcript of the cross interrogatories propounded to the witness, Eli Montgomery, by plaintiff's proxy counsel, Wm. H. Stewart, esq.; also, that R. M. Gaines, esq., attorney for defendants, objected to the 4th cross interrogatory as illegal; which objection was overruled by—

CH. A. LACOSTE, *Com'r.*

UNITED STATES OF AMERICA,
Southern district of Mississippi, city of Natchez, sct:

I, Charles A. Lacoste, a commissioner, duly appointed on the 31st day of May, A. D. 1842, by the circuit court of the United States, for the southern district of Mississippi, according to an act of Congress "for the more convenient taking of affidavits and bail in civil cases, depending in the circuit courts of the United States," passed February 20th, 1812; and an act in addition thereto, passed March 1st, 1817; and an act "to establish the judicial courts of the United States, passed Sep-

tember 24th,1789; do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witness lives in Natchez, State of Mississippi, more than one hundred miles from Jackson, State of Mississippi, the place of trial of the cause for and in which said deposition is taken, and is necessary.

I further certify, that the said deposition was taken at my office in Natchez, on this day, according to notice and agreement of counsel in writing, which is attached to the deposition of A. Buckner, in this cause, taken before me yesterday, and which is marked A; and that R. M. Gaines, for defendants, and that Wm. H. Stewart, for plaintiff, were present, and personally interrogated the witness, E. Montgomery.

I further certify, that on this seventeenth day of April, A. D. 1846, I was attended by the witness, who is of sound mind and lawful age, and the witness was by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witness; and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of sealing up, directing, and forwarding the same, with my own hand, to the court for which the same was taken.

I further certify, that I am not of counsel or attorney to either of the parties in said deposition and caption named, or in any way interested in the event of the said civil cause named in the caption.

In testimony whereof I have hereunto set my hand and seal.

CH. A. LACOSTE, [SEAL.]
U. S. comm'r, circuit court, U. S., for the Southern district of Mississippi.

UNITED STATES OF AMERICA,
Southern district of Mississippi,
City of Natchez, sct:

Be it remembered, that, on this twenty-sixth day of April, in the year of our Lord one thousand eight hundred and forty-five, before me, Charles A. Lacoste, a commissioner duly appointed on the 31st day of May, A. D. 1842, by the circuit court of the United States, in and for the southern district of Mississippi, according to an act of Congress "for the more convenient taking of affidavits and bail in civil cases depending in the circuit courts of the United States," passed February 20, 1812; and an act in addition thereto, passed March 1st, 1817; and an act "to establish the judicial courts of the United States," passed September 24th, 1789; personally appeared Aylette Buckner, a person of sound mind and lawful age, a witness for the plaintiff in a civil suit now depending in the circuit court of the United States, in and for the southern district of Mississippi, wherein Samuel S. Downey is plaintiff, and Benjamin J. Hicks, executor, and Mary M. Hicks, executrix, of Joseph T. Hicks, deceased, are defendants; and the said witness being by me first duly sworn to testify the truth, the whole

truth, and nothing but the truth, in regard to the matters in controversy in said suit, and being then by me carefully examined, did then and there depose as follows, viz:

"I am acquainted with the plaintiff, but am not acquainted with the defendants; I was well acquainted with the late Joseph T. Hicks, of the firm of Hicks & Arnold.

"About the 11th day of March, 1840, the plaintiff, Samuel S. Downey, came to the office of Buckner, Barrow & Stewart, in Natchez, accompanied by Andrew Arnold and Joseph T. Hicks, composing the firm of Hicks and Arnold, and also by John R. Hicks. At that time Samuel S. Downey, the plaintiff, employed said Buckner, Barrow & Stewart, to bring a suit or suits against 'the Mississippi Railroad Company' to recover the amount of a certificate of deposite for the sum of nine thousand seven hundred and ninety-nine dollars and eighty-nine cents, ($9,799 89,) and also to bring a suit against said company for about the like sum, being the balance deposited to the credit of Hicks & Arnold with said company, as appeared by the bank book of said Hicks & Arnold kept with said company. At that time I informed all the parties that there was strong doubt whether the federal court had jurisdiction of said claims in consequence of the citizenship of some of the parties; I was instructed, however, in order to gain time, to bring said suits in the federal court, where they were dismissed for want of jurisdiction, and immediately brought in the circuit court of Adams county, Mississippi, where they were prosecuted to judgment. At that time said plaintiff and Hicks & Arnold were present in the office of Buckner, Barrow & Stewart, (of which firm I was a member,) it was admitted by Hicks & Arnold that they were largely indebted to Samuel S. Downey, the plaintiff, for the hire of certain negroes, and that the certificate of deposite had been sent on by Hicks & Arnold to the said Downey in part satisfaction of said hire; said Downey refused positively to receive said certificate in part satisfaction of said indebtedness. I am not positively certain that said Hicks & Arnold promised to pay the amount of said certificate to said Downey; but my belief is, from the tenor of the conversation, that said Hicks & Arnold still considered themselves bound to pay the amount of said certificate, if the company did not. When said Downey refused to take said certificate in absolute payment of the amount specified on its face, said Hicks & Arnold, nor either of them, denied their liability to pay the amount in case the company did not.

"Nothing has ever been recovered from the company on said certificate, nor is there any prospect of ever realizing any thing.

"Although suit was instituted on said certificate, as I believe, in the name of Samuel S. Downey, the plaintiff, it was not intended by any of the parties, so far as I understood, that said certificate was to be a part payment absolutely of said debt; but said suit was so instituted because said Downey was the proper person to institute said suit, he being the payee of the certificate of deposite.

"The said John R. Hicks, alluded to in the first part of this deposi-

tion, I understood to be the brother of the said Joseph T. Hicks, now deceased. He was present at the aforesaid and other interviews of said Downey, and Hicks & Arnold, at the office of Buckner, Barrow & Stewart; but at no interview was any thing said to affirm or disaffirm in positive terms that said certificate was received in absolute payment of any part of said indebtedness, otherwise than as above stated."

AYLETTE BUCKNER.

UNITED STATES OF AMERICA,
Southern district of Mississippi,
City of Natchez, sct:

I, Charles A. Lacoste, a commissioner duly appointed on the 31st day of May, A. D. 1842, by the circuit court of the United States, for the southern district of Mississippi, according to an act of Congress "for the more convenient taking of affidavits and bail in civil cases depending in the circuit court of the United States," passed February 20th, 1812; and an act in addition thereto, passed March 1st, 1817; and an act "to establish the judicial courts of the United States," passed September 24th, 1789; do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witness lives in Natchez, State of Mississippi, more than one hundred miles from Jackson, State of Mississippi, the place of trial of the cause for and in which said deposition is taken and is necessary.

I further certify, that no notification was made out and served on the defendants or adverse parties, agent or attorney, to be present at the taking of the deposition, and to put interrogatories if he or they may think fit; and that no notification of the time and place of taking the said deposition was made and served on said defendants or adverse parties, because neither the said adverse parties, nor any attorney or agent of said adverse parties, was at the time of taking said deposition within (100) one hundred miles of the said city of Natchez, the place of taking the said deposition.

I further certify, that on this twenty-sixth day of April, A. D. 1845, I was attended by the witness, who is of sound mind and lawful age, and the witness was by me carefully examined, and cautioned, and sworn, to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witness; and, after carefully reading the same to the witness, he subscribed the same in my presence; I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding the same with my own hand, to the court for which the same was taken.

I further certify, that I am not of counsel or attorney to either of the parties in said deposition and caption named, or in any way interested in the event of the said civil cause named in the caption.

In testimony whereof I have hereunto set my hand and seal.

CH. A. LACOSTE, [SEAL.]
U. S. commissioner, circuit court, U. S., for the southern district of Mississippi.

UNITED STATES OF AMERICA,
Southern district of Mississippi, city of Natchez, sct:

Be it remembered, that, on this sixteenth day of April, in the year of our Lord one thousand eight hundred and forty-six, at the office of Buckner and Stewart, before me, Charles A. Lacoste, a commissioner duly appointed on the 31st day of May, A. D. 1842, by the circuit court of the United States, for the southern district of Mississippi, according to an act of Congress "for the more convenient taking of affidavits and bail in civil cases depending in the circuit courts of the United States," passed February 20th, 1812; and an act in addition thereto, passed March 1st, 1817; and an act "to establish the judicial courts of the United States," passed September 24th, 1789; personally appeared Aylette Buckner, a person of sound mind and lawful age, a witness for the defendants in a civil suit, now depending in the circuit court of the United States, in and for the southern district of Mississippi, wherein "Samuel S. Downey is plaintiff, and Benjamin J. Hicks and Mary M. Hicks, exc'r and exc'x of Joseph T. Hicks, dec'd, are defendants;" and the said witness being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in said suit, and being then by me carefully examined, did then and there depose as follows, in answer to interrogatories propounded to witness in person by Richard M. Gaines, esq., of counsel for defendants; a certified copy of which interrogatories is hereto appended, marked B, and referred to.

To 1st interrogatory, witness answers:

"They were all present at the first interview, which took place about the 11th of March, 1840, as nearly as I can recollect."

To 2d interrogatory he answers:

"I understood the refusal to relate to the time at which they were speaking, and also at a previous date, but how long previous I do not recollect."

To 3d interrogatory he answers."

"At the time at which the conversation above alluded to took place in the office of Buckner, Barrow and Stewart, I was aware that Hicks and Arnold owed to Downey another different debt to that mentioned in the certificate of deposite; that other debt was evidenced by a bond and other papers then before me."

To 4th interrogatory he answers:

"It is possible the parties may have had reference to the debt of five thousand dollars; but such was not my understanding of their conversation, and I do not believe that I did confound the two debts."

To the 5th interrogatory he answers:

"If the facts existed as mentioned in the interrogatory, I still believe, from the conversation that took place at the time, that the tacit admission of Hicks & Arnold to be considered liable for the amount of the certificate of deposite, had relation to that certificate, and not to the other debt.

"I do not think that I confounded the tacit admission of liability on one debt as applicable to the other."

To the 6th interrogatory he answers:

"I do not say that any positive admissions in so many words were made by Hicks & Arnold in regard to their liability on the certificate of deposite, otherwise than as tacit admissions. When Downey said that he should look to them for the amount of it if the bank did not pay it, Hicks & Arnold made no reply, admitting or denying their liability. Those tacit admissions had reference to the whole debt due from Hicks & Arnold to Downey, as well the certificate of deposite as the debt evidenced by the bond and other papers referred to in my third answer above."

To the 7th interrogatory he answers.

"Said 'exhibit C' is in my own handwriting, and a true copy of the original, which was left in the possession of Buckner, Barrow & Stewart; I do not know positively where it (said original) is, but I believe it was attached to a deposition taken for the circuit court of Warren county, Miss."

To the 8th interrogatory he answers:

"The said certificate of deposite, together with the bonds belonging to S. S. Downey, Joseph Amis, and John R. Hicks, due from Hicks & Arnold to those gentlemen, were all brought to the office of Buckner, Barrow & Stewart, by the parties and persons in the first part of this answer mentioned; in making entries in the books of Buckner, Barrow & Stewart, the claims due to each are entered in the names of each creditor respectively, the certificate of deposite in favor of S. S. Downey, for $9,799 89 to the credit of said Downey, and suit has been brought on said certificate and judgment recovered thereon in favor of said Downey, in the circuit court of Adams county, Miss."

To the 9th interrogatory he answers:

"I have no knowledge or recollection on the subject of this interrogatory."

And to cross interrogatories propounded to him in person by William H. Stewart, as proxy for Messrs. Burwell and Mason, solicitors for the plaintiff, (which cross interrogatories are also hereto appended and marked D,) witness answers:

To 1st cross interrogatory he answers:

"I never knew or heard of more than one certificate of deposite in favor of S. S. Downey."

To 2d cross interrogatory he answers:

"There was but one certificate on which suit was brought in the federal court and in the circuit court of Adams county, in the name of said Downey, which is the certificate referred to in my previous deposition."

To the 3d cross interrogatory he answers:

"If the paper referred to be the transfer from Hicks & Arnold, hereto attached, and marked 'exhibit C,' it is my own handwriting, as before stated."

To the 4th cross interrogatory he answers:

"As before stated, from all that came to my knowledge, I understood that the admissions related as well to the certificate of deposite as to the whole of the other debts."

To the 5th cross interrogatory he answers:

"It related to both, as I understood it."

To the 6th cross interrogatory he answers:

"All matters stated in my foregoing deposition have come within my own knowledge, except when derived from the persons and in the manner above stated."

AYLETTE BUCKNER.

B.

SAMUEL S. DOWNEY
vs.
BENJ'N J. HICKS and MARY M. HICKS, ex'or and ex'rix of Jos. T. Hicks, dec'd.

In the circuit court of the United States, for the southern district of Mississippi.

Interrogatories, in nature of cross interrogatories, propounded by Richard M. Gaines, esq., attorney for defendants, to Aylette Buckner, a witness in the above case, whose deposition was heretofore taken by the plaintiff.

1st. interrogatory. In the conversation alluded to by you in your deposition previously taken in this cause, you state it took place in the office [of] Buckner, Barrow & Stewart; was John R. Hicks, Samuel S. Downey, Joseph T. Hicks, and Andrew Arnold, present?

2d interrogatory. You state in your former deposition that S. S. Downey refused to receive the certificate of deposite mentioned in payment of their debt; do you mean by this that he refused to receive it at the time of the conversation aforesaid?

3d interrogatory. You say you do not undertake to say that Hicks & Arnold promised to pay said certificate; but your belief, from the tenor of the conversation, was that Hicks & Arnold still considered themselves bound to pay the certificate if the railroad company did not. Did you know at that time that Hicks & Arnold, independently of the certificate, owed said Downey another debt for negro hire for $5,000, to secure which they had transferred to Downey a debt which the railroad company owed them?

4th interrogatory. If there was such indebtedness and transfer, may not their acknowledgment that they felt bound to pay if the company did not, have had reference to this; and may you not, at this distance of time, have confounded in your memory the two debts?

5th interrogatory. If the fact should turn out that the certificate of deposite was owned by Joseph T. Hicks alone, or nearly all of it, for negro hire due before the partnership of Hicks & Arnold had accrued,

and if Hicks & Arnold owed a debt to Downey for $5,000 for negro hire due by them after the partnership, may not your want of knowledge of these facts have caused you to confound their acknowledgment of liability on one debt as applicable to the other?

6th interrogatory. When the admissions spoken of in your deposition were made, did you understand them to refer to hire due before the 1st of January, 1839, or to the hire which became due from Hicks & Arnold after that time, but before said admissions were made?

7th interrogatory. Look at the enclosed paper marked "exhibit C," by which said transfer was made, and state in whose handwriting it is; and whether or not it is a true copy of the original left in your possession. State also where the original transfer is, if you know.

8th interrogatory. Did you or not receive said certificate of deposite of the Mississippi Railroad Company, for $9,799 89, from S. S. Downey, as his property for collection; did you or not bring suit thereon in his name, and recover judgment in the circuit court of Adams county, against said company; was or was not said Downey credited on the books of Buckner, Barrow & Stewart; with the said certificate of deposite?

9th interrogatory. In March, 1840, *was* the condition and prospects of the Mississippi Railroad Company materially different from what they were in January, 1839; and when did the notes and liabilities of said bank begin to depreciate?

I certify the foregoing to be a correct transcript of the interrogatories propounded to the said witness (Aylette Buckner,) by defendants' counsel, R. M. Gaines, esq., in the above stated case.

CH. A. LACOSTE,
Commissioner.

D.

Cross interrogatory by plaintiff. 1st. Was there or not more than one certificate of deposite made by Hicks & Arnold, or at their instance, in favor of and payable to Downey; or did you or not, at the conversations referred to, hear of more than one such?

2d. Was there or not more than one certificate of deposite on which suit was brought in the federal court at Jackson in the name of Downey; and is or is not the certificate referred to in your previous deposition the same on which said suit was brought?

3d. In whose handwriting is the paper referred to in the 3d interrogatory of defendants?

4th. Did you or not understand the admission of liability to pay, if the bank did not, of which you have spoken in your deposition, to refer to the hire due previously to the date of said conversations, or to hire due thereafter; and did you or not understand said admissions to refer to Hicks & Arnold's liability to pay their own bonds given to Downey for negro hire, or to their liability to pay a note or certificate of deposite, or some other evidence of debt made by the railroad bank

some time previous to said conversations, and which Downey had previously received from Hicks & Arnold, or one of them?

5th. Did the admission of liability to pay, of which you have given evidence, refer to a debt already held by Downey against the railroad bank, or to one in which he was about to become interested, by receiving it as collateral security for other debts due by Hicks & Arnold?

6th. Are any of the matters stated by you in answer to interrogatories of defendants, stated on information, and not within your own knowledge? If any are, please to distinguish such from what you state of your own knowledge.

MASON & BURWELL,
For S. S. DOWNEY.

"*Exhibit C.*"

NATCHEZ, 14*th June*, 1845.

DEAR SIR: You have below a copy of the assignment made by Hicks and Arnold, as requested.

BUCKNER & STEWART.

"This agreement and assignment, dated and executed this eleventh day of March, 1840, between Joseph T. Hicks and Andrew Arnold, of the one part, and John R. Hicks, Samuel S. Downey, and Joseph Amis, of the State of North Carolina, of the other part, witnesseth: That, whereas the said Joseph T. Hicks and Andrew Arnold are justly indebted to the said Joseph Amis two thousand two hundred and fifty dollars, by a certain bond or obligation dated 1st January, 1839, signed by said parties of the first part, and due on the first January, 1840; and also in the further sum of eight hundred and twelve dollars, by bond, dated 6th March, 1840, and due on 9th October, 1840. And whereas, also, the said parties of the first part are also indebted to the said Samuel S. Downey in the sum of four thousand eight hundred dollars, by bond dated 1st January, 1839, and due [in] January, 1840; and also in the sum of two thousand and fifty-eight dollars, by bond dated the 6th of March, 1840, and payable on the 9th October, 1840.

And whereas the said parties of the first part are indebted to the said John R. Hicks in the sum of three thousand dollars, by bond dated 1st January, 1839, and payable on the 1st January, 1840; and also in the sum of twelve hundred and eighteen dollars, by bond dated 6th March, 1840, and payable on the 9th October, 1840.

Now, in order to secure the said parties of the second part the said sums of money and interest thereon, the said parties of the first part have and do hereby assign and transfer, to the said parties of the second part, all of the claim of said parties of the first part, in and to a certain sum of money deposited by them in the bank of the Mississippi Railroad Company, amounting to the sum of ten thousand and thirty-seven dollars and sixty cents, or thereabouts, as appears by an entry of the teller of said bank, entered in the bank book of said parties of the first

part; hereby giving to the said parties of the second part full power to sue, in our names, for their use or otherwise, as they shall deem best. And it is expressly agreed, that whatever amount shall be collected from said bank, by suit or otherwise, shall be applied in satisfaction of said bonds, as far as it will go, in equal ratio in proportion to the amount of the owners of the bonds.

In testimony whereof the parties of the first part have hereunto set their hands and seals, at Natchez, this 11th day of March, 1840.

JOSEPH T. HICKS, [SEAL.]
ANDREW ARNOLD. [SEAL.]

UNITED STATES OF AMERICA,
Southern district of Mississippi,
City of Natchez, sct:

I, Charles A. Lacoste, a commissioner duly appointed on the 31st day of May, A. D. 1842, by the circuit court of the United States, for the southern district of Mississippi, according to an act of Congress "for the more convenient taking of affidavits and bail in civil cases depending in the circuit court of the United States," passed February 20th, 1812; and an act in addition thereto, passed March 1st, 1817; and an act "to establish the judicial courts of the United States," passed September 24th, 1789; do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witness lives in Natchez, State of Mississippi, more than one hundred miles from Jackson, State of Mississippi, the place of trial of the cause for and in which said deposition is taken and is necessary.

I further certify, that the said deposition was taken at the office of Messrs. Buckner and Stewart, in Natchez, on this day, according to the terms of the notice from Benjamin J. Hicks, defendant, to plaintiff or his attorneys, which is hereto appended, and marked A; and that at the said time and place, R. M. Gaines, esq., personally was present, and interrogated the witness on behalf of the defendants, and William H. Stewart, esq., on behalf of the plaintiff.

I further certify, that on this sixteenth day of April, A. D. 1846, I was attended by the witness, who is of sound mind and lawful age, and the witness was by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witness; and, after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of sealing up, directing, and forwarding the same, with my own hand, to the court for which the same was taken.

I further certify, that I am not of counsel or attorney to either of the parties in said deposition and caption named, or in any way interested in the event of the said civil cause named in the caption.

In testimony whereof I have hereunto set my hand and seal.

CH. A. LACOSTE, [SEAL.]
U. S. commissioner, circuit court, U. S., for the southern district of Mississippi.

A.

April 2d, 1846.

To SAMUEL S. DOWNEY,
Or his attorneys, Mason & Burwell.

GENTLEMEN: You will please take notice, that I shall proceed to take the depositions of Aylette Bukner and Eli Montgomery, by way of cross interrogatories, to be used as evidence in a certain civil cause now pending *now pending* in the circuit [court] of the United States, to be holden at the city of Jackson, for the southern district of Mississippi, wherein Samuel S. Downey is plaintiff, and Joseph T. Hicks's executors are defendants; the depositions to be taken on the (16th) sixteenth day of April, (1846,) A. D. one thousand eight hundred and forty-six, at the office of Messrs. Buckner & Stewart, of which firm the above stated witness, Aylette Buckner, is a member; said office is located in the city of Natchez, State of Mississippi, when and where you can attend, and put cross interrogatories, if you think fit to do so.

BENJAMIN J. HICKS,
Executor of Jos. T. Hicks, deceased.

We agree that the taking of the deposition of Eli Montgomery be adjourned to ten o'clock to morrow, 17th April, 1846, at the office of Chas. A. Lacoste, commissioner. Natchez, 16th April, 1846.

R. M. GAINES,
For Hicks.
W. H. STEWART.

STATE OF NORTH CAROLINA,
Granville county.

The deposition of John R. Hicks, a witness produced on the part of the plaintiff, in a suit pending and for trial in the circuit court of the United States, for the southern district of Mississippi, in which Samuel S. Downey is plaintiff, and Benjamin J. Hicks, executor, and Mary M. Hicks, executrix, of Joseph T. Hicks, deceased, are defendants. Taken before me, Thomas B. Barnett, one of the justices of the county court of pleas and quarter sessions, for the county of Granville aforesaid, the 9th day of April, A. D. 1845, at the house of Thomas B. Barnett, in the said county, and to be read in evidence on the trial of the said cause.

The said John R. Hicks, being by me first carefully examined, and cautioned, and sworn to testify the whole truth, did depose and give evidence as follows:

Questions propounded by Saml. S. Downey, plaintiff, to John R. Hicks.

1st. Are you acquainted with the parties to this suit; and were you, in his lifetime, acquainted with Joseph T. Hicks; and where do you and Samuel S. Downey reside at this time?

Answer. I am; and was acquainted with Joseph T. Hicks in his

lifetime; Saml. S. Downey and myself, the witness, John R. Hicks, reside in the county of Granville, State of North Carolina.

Question 2d. Do you know anything of the hiring by Wellman & Mills of certain negroes from Saml. S. Downey? If yea, state the times of such hiring, the length for which hired, the number of negroes, for what purpose hired, the price agreed to be given, and the time at which to be paid.

Answer. I know that Wellman & Mills hired negroes of Samuel S. Downey to work on the railroad leading from Natchez, Mississippi, to Jackson, Mississippi; the hire commenced the 10th day of February, 1836, and continued to the first of October following; Samuel S. Downey reserving to himself the privilege of discontinuing the hire at the expiration of three months, if he chose; the hire, I think, was continued some months longer than the three months; the number of negroes not recollected, nor the amount of hire; there was an agreement between the parties for hire, which I believe was placed in the possession of Joseph T. Hicks.

Question 3d. Do you not know that Joseph T. Hicks was agent or attorney for Samuel S. Downey to attend to and have the negroes hired to Wellman & Mills, by Samuel S. Downey, taken care of during the time of said hire, and to collect of them the hire for said negroes as it became due? If yea, state all you know of said agency, and what amount of hire Joseph T. Hicks collected, as well as you can recollect.

Answer. Joseph T. Hicks became the agent of Samuel S. Downey at the time of hiring the negroes to Wellman & Mills, and went with the negroes to Natchez, Mississippi; he collected the hire of Wellman & Mills; the amount I cannot state.

Question 4. Did not Joseph T. Hicks become the hirer of the negroes when the hire expired with Wellman & Mills? If yea state the time of such hiring, and for what purpose hired, and how long said negroes were worked by Joseph T. Hicks on the Jackson and Natchez railroads, Mississippi.

Answer. I do not know the precise time of the negroes leaving the employment of Wellman & Mills; but, after the expiration of hire to them, they were taken by Joseph T. Hicks, and worked by him for a short time near Jackson—his contract being vacated. He hired them for a short time to Judge Jack, of Pennsylvania; they were then taken in possession of Joseph T. Hicks, forming a co-partnership with Major Arnold; they were continued in their possession and hire to the 1st January, 1840, working on the Natchez road; they were to pay nearly five thousand dollars a year; I think it was about $4,800; though the precise amount I cannot specify.

Question 5th. Do you know why you were induced to receive of Joseph T. Hicks, in Natchez, a certain paper purporting to be a certificate of deposite for $9,789$\frac{89}{100}$ in the railroad bank at Natchez, brought by you and sent by Joseph T. Hicks to Samuel S. Downey? If yea, state all your reasons for receiving the same, and also the conver-

sation which occurred between you and Joseph T. Hicks; likewise the conversation that occurred between you and General Quitman, the president of the bank, relative to the prospects and situation of the bank, and what would be the ability of said bank to pay said certificate of deposite after it fell due; and in what kind of funds, if desired?

Answer. I was induced to receive the certificate of deposite from Hicks & Arnold from the assurance given by my brother, Joseph T. Hicks, of the perfect solvency of the institution, and from the assurance of the president of the bank, General Quitman, that the deposite should be punctually paid, when it became due, in goods funds—specie if required. My brother, Joseph T. Hicks, assigned as a reason for his confidence in the institution that the stock was taken by wealthiest and most influential men in the State; and that it had at its head men of sterling integrity and business men, and that it would also be patronized by the State, which would at once place it above every other institution of the kind in the State. General Quitman, in conversation with me, confirming the views of my brother, Joseph T. Hicks, and leaving no doubt on my mind that the certificate would be promptly paid, when due, in specie if desired, led me to receive the certificate of deposite for Samuel S. Downey.

Question 6th. What authority had you from Samuel S. Downey to receive said certificate of deposite from Hicks & Arnold?

Answer. I received it without authority, and was induced to do so from the belief of the perfect solvency of the bank, and from the belief that its bearing 8 per cent. interest was a disposition of the fund that would be gratifying to Samuel S. Downey?

Question 7th. When S. S. Downey received the certificate of deposite, did he release Joseph T. Hicks of the debt he owed him, or Hicks & Arnold, on account of receiving said certificate in his possession?

Answer. He made no release when he received the certificate of deposite.

Question 8th. When you received the said certificate of deposite of Joseph T. Hicks, in Natchez, did you discharge him from the liability to pay the debt due S. S. Downey, or the debt due S. S. Downey from Hicks & Arnold for hire of negroes, on account of receiving said certificate of deposite.

Answer to 8th question. I received the certificate of deposite from Hicks & Arnold without consultation or authority from Samuel S. Downey, and could grant no discharge.

Question 9th. Has said certificate of deposite ever been paid by the bank, or Hicks & Arnold, or any person else?

Answer. Not within my knowledge.

Question 10th. Was there in fact and in truth a deposite of money made in the said railroad bank by Hicks & Arnold to the credit of Samuel S. Downey, to the best of your knowledge and belief?

Answer. I have always been of the impression that the greater part or the whole of the amount was a mere transfer of debt from the rail-

road company to the bank [of] Mississippi Railroad Company, and not an actual deposite of money.

Int. 11th. Did you, at any time in and about the time that said certificate was issued, or any time since, learn from Hicks & Arnold, or either one of them, that said certificate of $9,789 $\frac{89}{100}$ was issued by said bank, not on money actually deposited by them to the credit of S. S. Downey, but was obtained in some way other than a deposite in the bank [of] Mississippi Railroad Company, I alluded to the paper purporting to be a certificate of deposite, dated January, 1839, sent by them and brought by you to S. S. Downey as payment for negro hire anterior to that time?

Answer. I think I received the information from Hicks & Arnold that the deposite was a simple transfer of a debt due Hicks & Arnold from the railroad company to the credit of Samuel S. Downey in the bank [of] Mississippi Railroad Company. The certificate of deposite for hire anterior to its date.

Question 12th. How did Hicks & Arnold arrive at that particular amount, specified in said certificate as the amount due S. S. Downey for negro hire anterior to that time?

Answer. They had a balance struck on their accounts, which they said was the amount due S. S. Downey, which was not examined by me, but left for the future examination and settlement by S. S. Downey.

Question 13. Are you not confident, in your own mind, as to what you stated to S. S. Downey as your own impressions and the assurances of General Quitman, related by you, relative to the solvency of the bank, and its punctuality in meeting its engagements, and especially to pay the said certificate in specie if required, induced Samuel S. Downey to receive said certificate in his possession; he having no knowledge of the solvency or insolvency of the bank, nor other means then of knowing, except through you and your brother, Joseph T. Hicks's letters to him?

Answer. I had, and have no doubt but he was influenced by his confidence, both in the statements of my brother Joseph T. Hicks and myself, in the receiving the certificate of deposite; he then having great confidence in the opinions and statements of both of us.

Question 14th. Do you know anything of a note for $456, signed by Hicks & Arnold, and payable to S. S. Downey, due 1st March, 1840, for hire of negroes from 1st January, 1840, to 1st March, 1840? If yea, state in whose handwriting the said note in body of it is, and which of the firm of Hicks & Arnold signed, and where and for what hire of negroes.

Answer. Hicks & Arnold executed a note to Samuel S. Downey for $456, or thereabouts; it was signed in Natchez. The body of the note was written by Sam'l S. Downey. I do not recollect how the note was signed; whether by both, or by one in the name of the firm. Joseph T. Hicks was in the habit of signing in the name of the firm.

The said note was for hire from 1st January, 1840, to 1st March, 1840.

And further this deponent saith not.

JNO. R. HICKS.

Taken and sworn to before—

THOMAS B. BARRETT.

I, the said Thomas B. Barrett, justice of the peace as aforesaid, do hereby certify, that the foregoing deposition was taken before me on the day and at the place above mentioned, and was signed by the deponent in my presence, the deponent having been by me first carefully examined, and cautioned, and sworn to testify the whole truth. And I further certify, that the cause of taking the said deposition is, that the said defendant lives in the said county of Granville, at a greater distance than one hundred miles from the city of Jackson, place of trial [of] suit; that no notification was given to the defendants in the said cause to be present at the taking of said deposition and put interrogatories, because neither of the said defendants, nor any attorney of them, or either of them, was or is within one hundred miles of the place of caption aforesaid.

And I further certify, that I am not, nor have been, of counsel or attorney to either of the parties, nor in any manner interested in the event of the said cause.

Given under my hand at my house as aforesaid, in the said county, the said 9th day of April, A. D. 1845.

THOMAS B. BARRETT,
One of the justices of the court of pleas and quarter sessions of Granville county.

NORTH CAROLINA, *Granville county, ss:*

I, James M. Wiggins, clerk of the court of pleas and quarter sessions, for the county and State aforesaid, hereby certify, that Thomas B. Barnett, esq., whose signature appears to the foregoing certificate to the deposition of Dr. John R. Hicks, is, and was at the signing thereof, an acting justice of the peace in and for Granville county, and that to all his official acts as such full faith and credit should be given.

In testimony whereof I have hereunto subscribed my name
[L. S.] and affixed the seal of my office, at Oxford, the 10th day of April, A. D. 1845.

JAS. M. WIGGINS, *Clerk.*

And the deposition of James Beasley, taken by defendants, which is as follows:

STATE OF NORTH CAROLINA,
Granville county.

Be it remembered, that on this the second day of February, in the year of our Lord one thousand eight hundred and forty-seven, before

me, Lumsford A. Paschall, presiding justice of the court of pleas and quarter sessions for the county of Granville, in the State of North Carolina aforesaid, under and by virtue of an act of Congress entitled "an act to establish the judicial courts of the United States," personally appeared at the register's office in the court-house at Oxford, James Beasley, a witness of lawful age, for and on behalf of the defendants in a certain civil cause depending in the circuit court of the United States, for the southern district of Mississippi, holden at Jackson, wherein Samuel S. Downey is plaintiff, and Benjamin J. Hicks, executor, and Mary M. Hicks, executrix, of Joseph T. Hicks, deceased, are defendants; and the said witness being by me first carefully examined and sworn to testify the whole truth, makes oath, deposeth, and saith, that he resides in the county of Granville, State of North Carolina, and more than one hundred miles from the city of Jackson aforesaid, the place of trial; *makes oath, deposeth, and saith, that he resides in the county of Granville, State of North Carolina, and more than one hundred miles from the city of Jackson aforesaid, the place of trial*, of this cause. Furthermore in answer to interrogatories he saith as follows, to wit:

Question by defendants. Look at the bond now shown you, purporting to be a bond executed by Joseph Green, N. C. Cannaday, and yourself, to Samuel S. Downey, for the sum of $1,296, bearing date the 22d of March, 1838, and payable twelve months after date, and state whether you executed the said bond to S. S. Downey, and under what circumstances and for what consideration, and whether the same has been paid to the said Downey; also give a copy of the said bond in your deposition.

Answer. The following is a copy of said bond:

$1,296.

Twelve months after date we, or either of us, promise to pay to Samuel S. Downey or order twelve hundred and ninety-six dollars, for value received this 22d day of March, 1838.

JOS. GREEN, [SEAL.]
N. E. CANNADAY, [SEAL.]
JAS. BEASLEY. [SEAL.]

Test: WILLIAM GREEN,
As to Beasley and Cannaday.

The above is a copy of a note given by Jos. Green, N. E. Cannaday, and myself to Sam. S. Downey, for an order given by S. S. Downey on Joseph T. Hicks, of Mississippi, for twelve hundred dollars. The reason why the note calls for twelve hundred and ninety-six dollars is, that the note was drawn twelve months after date, and was to bear interest according to the laws of Mississippi. When Mr. Joseph Green received the money of Jos. T. Hicks, of Mississippi, on Mr. Downey's order, he sent in the note as above, which was signed by N. E. Cannaday and myself as securities of Jos. Green, and Mr. Cannaday and myself have since paid the note to S.S. Downey.

JAMES BEASLEY.

Cross examined by the plaintiff.

Question by plaintiff. Did you not, whilst in Mississippi, tarry sometime with Joseph T. Hicks and Andrew Arnold, where my negroes were at work for them? And if so, state when and how long a time, and what sort of work the negroes were engaged in for them.

Answer. In February, 1840, I was with Hicks and Arnold in and near Natchez, Mississippi; they had Mr. S. S. Downey's negroes at work for them; the labor these negroes were doing was repairing a railroad; I remained with them about one month.

Question by same. Did you or did you not, at any time during your stay with them, learn from either Hicks or Arnold, or both of them, that they were indebted to S. S. Downey, the plaintiff, for hire of said negroes? And if so, state what amount, if any; and also state all you heard from them, in any way showing they were indebted to me.

Answer. I certainly heard Joseph T. Hicks say that they were indebted to S. S. Downey, the plaintiff, but to what amount I do not recollect to have heard, but for the hire of negroes.

Question by same. Did you hear any conversations relative to a certain certificate of deposite issued by the Mississippi Railroad Bank at Natchez? And if so, state all you heard them say relative to their responsibility to make said certificate good to S. S. Downey, the plaintiff, in the event it was not paid by said bank or said railroad company, said certificate having been sent *to* by them to said S. S. Downey.

Answer. I did understand from Joseph T. Hicks that such a certificate had been sent to S. S. Downey by said Hicks and Arnold; and said Hicks at the same time said, that if said certificate had been presented at maturity, and the said bank or railroad had failed to pay, that in that case he would have felt himself bound to pay to said S. S. Downey the amount of said certificate; I think this occurred in several conversations.

Question by same. Did you ever hear from Jos. T. Hicks during these conversations, that he felt himself bound to S. S. Downey, the plaintiff, for the amount of said certificate of deposite at the time it was issued and sent to said Downey, and up to the time said certificate became due?

Answer. I did learn from Joseph T. Hicks, in our conversations on the subject of said certificate of deposite, that he felt himself bound, from the issuing of said certificate up to the time it became due, to make it good to S. S. Downey, provided the said bank or railroad failed to pay; but that inasmuch as said S. S. Downey had failed to present said certificate at maturity for payment, he should resist the payment for that reason.

Question by same. Did Joseph T. Hicks, at any time during your stay, offer to pay you money which he owed me, to bring to North North Carolina to me?

Answer. He did.

Question by same. State, if you please, why you did not receive said money for me.

Answer. Joseph T. Hicks offered to pay me in Mississippi money, which I refused to take; and I was looking for you out there soon, and thought you might attend to it yourself.

Question by same. Would you have received Mississippi money in payment of a debt due to yourself at that time?

Answer. I would not.

Question by same. What did you consider Mississippi money worth at that time?

Answer. When I was out there only one bank was at par; as to what it was worth I am unable to say, for I would not have taken any of the currency of Mississippi in payment of a debt.

Question by same. Did you ever learn from Joseph T. Hicks that he had been very successful in his business of undertaking work on railroads, and that he had made large profits from the hire of S. S. Downey's negroes?

Answer. I did.

Question by same. Did not Joseph T. Hicks show a disposition to boast of the large amount of money or wealth which he had accumulated from being an undertaker on railroads?

Answer. He did.

Question by same. How much do you suppose Jos. T. Hicks was worth at the time he first became the hirer of my negroes?

Answer. I do not know.

Question by same. How much do you suppose he was worth at the time he was boasting about his wealth, judging from what he said?

Answer. I could form no idea; he said he had got rich.

Question by same. Was he considered rich when he left North Carolina?

Answer. He was not.

And further this deponent saith not.

JAMES BEASLEY.

I, Lumsford A. Paschall, presiding justice of the court of pleas and quarter sessions for the county of Granville, State of North Carolina, under and by virtue of an act of Congress, entitled "An act to establish the judicial courts of the United States," do certify, that at the request of the defendant in the cause mentioned in the foregoing deposition, I caused the deponent therein, James Beasley, to come before me, at the time and place mentioned in the caption; and I further certify, that the reason for taking the said deposition of the said James Beasley is, that the said witness resides in the county of Granville, State of North Carolina aforesaid, more than one hundred miles from Jackson, the place of the trial of the said civil cause, depending, as aforesaid, in the circuit court of the United States, for the southern district of Mississippi, and that due notification was given to the said plaintiff to be present at the taking of the said deposition, and to put interrogatories if he might think fit, because the said plaintiff resides within one hundred miles of the said town of Oxford, the place of the taking of the said deposition.

And I do further certify, that I am not of counsel or attorney for either of the parties in the deposition mentioned, nor interested in anywise in the event of the said civil cause depending between the said parties; and that the said deposition was by me reduced to writing in the presence of the said witness, and by him subscribed in my presence.

In testimony whereof I have hereunto subscribed my name and affixed my private seal, having no seal of office, this 2d day of February, A. D. 1847.

L. A. PASCHALL, [SEAL.]

Presiding justice of the court of pleas and quarter sessions for the county of Granville, State of North Carolina.

The plaintiff then read the following letters, after proving them to be wholly in the handwriting of Joseph T. Hicks:

RAILROAD, 14 *miles from Natchez, May* 1, 1837.

Mr. DOWNEY:

DEAR SIR: Believing that a letter would not reach you before you left home for this country, I have deferred writing to you until this time. I expected to have seen you in this country before now, as you wrote me you would be in April. I am now on the seventeenth section of this road, and the hands average me about three dollars apiece per day—some of the men averaged about five dollars per day last week. I made only $2,000 clear on my work at Jackson. The company are out of funds, and will not be able to pay me until July, when they will have money a plenty; they, at this time, owe me five thousand dollars, but it is bearing eight per cent. interest. Mills has not paid up his bond yet. He is behind hand, I believe. Wellman is good for them, but he is in Missouri. The hands are all well, and have all been vaccinated. I shall finish this contract in two months and shall take another. I tried to hire out the negroes when I quit work at Jackson, but could not get what I am giving for them. The pecuniary embarrassments of this country is greater than has ever before been known.

If I find it necessary I shall use some of your funds for a few months, and pay you interest. My business so completely occupies my time that I have no time for writing, except nights, and I have no candles yet.

Please to let me hear from you.

Yours, &c.,

JOSEPH T. HICKS.

NATCHEZ, *January* 8, 1838, (1839.)

Mr. DOWNEY:

DEAR SIR: I think that your lot of negroes, which I have in my

possession, are at too high prices at present, considering the number of them that are entirely useless and do not earn their board. I am willing to give a fair price for all that are of any service to me. I will refer you to my brother for information as regards the price I am willing to give, and also the state of health and infirmity of Lewis, Mary, Peggy, Reuben, for whom I have been paying high prices ever since I have had them—without deriving any benefit whatever from their services. I have sent you a full account of all moneys received by me and paid out for clothing, &c., by my brother, which he will hand to you. You will see in your account board for three negroes from October 7th to April 1st, 1838. These were Lewis, Reuben, and Peggy—negroes which I could not hire out at any price. Your men were hired to Arnold and Jack at $20 per month, and your women at $13 per month; and Dowsey and Anna at the same old rates that Wellman and Mills gave. I had Mary nursing a child in the neighborhood for her board only, yet I have given you credit for her hire. I have sent you a certificate of deposite by my brother, who will hand it to you.

JOSEPH T. HICKS.

July 19, 1838.

Mr. DOWNEY:

DEAR SIR: The last letter I received from you I do not recollect the date, but I think it was dated about three months ago. I would be glad to hear from you at least once in a month, or oftener, if convenient. Things are going on as usual in this State. The sickly season commenced about the middle of June, and I have had some very severe cases of sickness among the hands. Several of yours have been very sick, several of Dr. Hicks's, Nat. and Ann, belonging to Col. Amis, and some of my own. It is generally a season of fatigue and anxiety to me. I thank God that I am doing better than I could have expected. My business is a large one, but a very sure and profitable one. I lead a very active life and get well paid for it. Those of the negroes that were sick are improving very fast. I think that I have made arrangements with the bank to receive my money on deposite, and give me a certificate of deposite, bearing interest. The president assured me the arrangement would be made as soon as the board should meet. I believe the negroes are very well satisfied. I hear of no dissatisfaction among them. I have no news that would be interesting to you. If you intend coming south this fall, you will find me on the road leading from Natchez to Gallatin, about 12 miles from Natchez, in a railroad shantee. If you wish to hire or sell your hands, I will either hire or buy, if you do not ask too much for them.

I could amuse you by relating the arts and devices which some of the women have been making use of to seduce me, but it is not worth either time or paper. Your aunt Smith never sends a single word to me in your letters; what is the cause of it? Has she forgotten me? John has never answered my letter; I suppose he does not love to

write. Tell James, and Jane, and little Ann, that I have not forgotten them. A. W. Venables has never condescended to answer my letter, in compliance with his promise. Is Mr. Graham at Shiloe yet? If I were among your acquaintances, I could write a thousand things that would be interesting to you. Give my best respects to the Miss Reads, if you should see them. The Mississippi ladies are more mannerly than the Granville ladies; they have never slighted me since I have been in the country. Excuse this letter, as I write to prevent your too great anxiety about the health of your negroes. I get an opportunity of sleeping about one night in the week. I ought to be sleeping now, for it is 11 o'clock at night. Give my respects to inquiring friends. My health and spirits are very fine. Your friend, &c.,

JOSEPH T. HICKS.

March 3, 1839.

To the president and directors Bank Mississippi Railroad Company.

GENTLEMEN: It is known to you that we have ever entertained the kindest feeling towards your institution, and every disposition of indulgence, to the utmost of our ability. The time has now arrived when ruin awaits us, from a total inability to use your post notes to meet our engagements. We are therefore compelled to make this appeal to you, to adopt some plan by which we can be relieved from our difficulties. We would respectfully submit to you the following propositions, by which we may rid ourselves of our present difficulties, created by our contracts to comply with our engagements with you, viz., to pay us the sum of eight thousand dollars in Union money; the balance to let us have slaves at a fair valuation. Should it not be convenient to let us have the Union money, by selling us the whole amount in slaves, we might be enabled to mortgage them to our creditors, and render us easy for the present. Your consideration of the above proposition will greatly oblige, yours, most respectfully,

HICKS & ARNOLD.

It was admitted on the trial that Joseph T. Hicks died about the 15th June, 1842.

This being all the testimony in the cause before the jury, the plaintiff requested, by his counsel, that the court should charge the jury to the effect following:

That the acceptance by the plaintiff of the certificate of deposite for a precedent debt due him by Hicks, or Hicks & Arnold, was no payment or extinguishment of such debt, unless there was an express agreement to accept it as such payment, and to take the risk of the solvency of the bank.

That the certificate of a bank due at a future day, like the note of any third person, if given for a pre-existing debt, is not payment and discharge thereof, unless specially agreed to be so taken; and if a receipt in full be given, it is still a question of fact for the jury to decide,

whether there was such agreement or not; and that unless the certificate be afterwards paid by the bank, it is prima facie no satisfaction of the pre-existing debt. That if the certificate remain in the hands of the creditor unpaid, and he produces it on the trial, the debt for which it was given is not thereby extinguished. That the guarantor of a note, bill, or certificate of deposite, whose name does not appear on the paper as drawer or endorser, is bound therefor without notice, where the maker, or party primarily liable, was insolvent at its maturity. That the burthen of proof to show that the certificate given for a precedent debt is a payment and extinguishment thereof, is upon the party alleging such payment in the cause at bar, upon the defendants; and that, prima facie, such certificate is not a payment or extinguishment of the debt, but the right to sue for that remains with the plaintiff, unless it be proved by the testimony that such certificate was agreed to be taken in absolute discharge of the debt, and the plaintiff agreed to run the risk of its being paid. That, if both parties are equally innocent and ignorant that the bank was insolvent, the loss must be borne by the payee of the certificate. That the holder of collateral security may sue on it, and the taking of such security does not suspend the right of action for the debt for which it was given. That bringing of suit to the first term of the court after the collateral paper was due, is using all the diligence required of the holder by the law, if such suit be there diligently prosecuted; and if the debtor on the collateral paper was insolvent, suit need not have been brought upon the paper at all, but might be or not, at the option of the holder.

That, if the witness Arnold be interested in the question, it goes to his credibility; and, though he may be competent, yet it is the duty of the jury to consider how far he is worthy of credit; and the fact of his interest, though he be released by defendant, is an important consideration in deciding how far his statements are entitled to credit. That if the jury believed, from the evidence, that Hicks & Arnold, or Hicks, after the maturity of the certificate, admitted their liability to make it good, or to pay the debt to the plaintiff for and in payment of which it had been received, that such admission is evidence that the certificate was not taken as payment absolutely, but as conditional payment only, and as further evidence that they knew of the non-payment by the bank at maturity, and had notice of all the facts necessary to hold them responsible as guarantors, and liable for the amount.

That, if the defendants' testator was agent of the plaintiff until 7th November, 1836, and on that day took the negroes on hire for himself, *that* his character of agent for hiring was merged in his capacity of hirer for himself.

That, if the drawing of the check was a mere form necessary to transfer the credit in bank from one to the other, the giving of the check makes no difference, but the effect is the same as though Hicks & Arnold had transferred a certificate of deposite; and, if the certificate was taken out by Hicks & Arnold, the giving of a check previously, or the certificate being payable to Downey, makes no difference, but

the rule is the same as before stated in regard to the transfer of a note on account of a debt.

That a creditor, having received collateral security, ought to wait a reasonable time to make it available; but may do so or not, at his discretion, before suing on the original cause of action.

That the payee or transferee of a certificate may be liable for the amount, without any endorsement of it by him.

That the entry in the book "by cash" is subject to explanation, and he may be allowed to show that no cash was in fact received.

That, if Joseph T. Hicks admitted to Montgomery and Buckner, or either of them, in March, 1840, that he was bound to make the certificate good, such admission of liability amounts to a waiver of notice of non-payment, and is an admission that all the acts have been done necessary to charge the defendants with the amount of the certificate.

The defendants also requested the court to instruct the jury as follows:

The court is requested to instruct the jury that if they believe, from the evidence, that Joseph T. Hicks and Hicks & Arnold were indebted to the plaintiff; and if they further believe that the Mississippi Railroad and Banking Company was indebted to Hicks & Arnold; and if they further believe that John R. Hicks, acting as the friend or agent of Downey, agreed with Hicks & Arnold to receive, in payment of the balance of the account due to plaintiff from Joseph T. Hicks and Hicks & Arnold, a certificate of deposite of said bank, payable to said Downey, and said certificate was so given and received by said John R. Hicks, without authority from Downey; and if they further believe that Hicks informed Downey of all the facts, and he ratified his act, either positively or by acquiescence, they must find for the defendants, if said certificate was for the balance due to plaintiff.

2. That, if they believe that the certificate was received by said Hicks as payment of the balance due to Downey, and he informed Downey of all the facts, and Downey did not, before the certificate fell due, return it, or repudiate Hicks's acts, that, in such case, they must find for the defendants.

3. That, if they believe that the said certificate of deposite was received by John R. Hicks, in payment of the balance due to Downey, subject to the approval of Downey, if Downey received the certificate of deposite, and was informed of the facts, and kept the certificate and did not return it before it was due, or by any other acts approved of John R. Hicks's act in receiving it in payment, they must find for the defendants.

4. If they believe, from the evidence, that John R. Hicks and Joseph T. Hicks made a statement or settlement of the amount due to the plaintiff from J. T. Hicks and Hicks & Arnold; and if they believe that the plaintiff had the account sent to him, or knew of it, and approved the settlement, it is evidence that the balance so ascertained is only due.

5. If they believe that the certificate was received as conditional payment of the balance due on the settlement, and Downey with know-

ledge of the facts ratified it, he was bound to present the certificate of deposite at maturity to the bank and demand payment, and give notice thereof to Hicks & Arnold; the defendant is discharged unless such demand were made and notice of non-payment were given in a reasonable time.

Which instructions, as asked by the plaintiff, the court refused to give, except so far as contained in the charge as hereinafter stated. The court then charged the jury as follows:

Instructions given by court.

DOWNEY vs. HICKS.

An agent is bound to act in accordance with his authority to make his acts binding on his principal. If the agent exceeds his authority, his principal is not bound by his act so exceeding his authority, unless the principal afterwards ratify his act. If a principal, after he is informed what an agent has done, ratify his acts, he (the principal) is bound by the acts of the agent, although the agent may not have had any authority to do the act so ratified at the time it was done. An act done as an agent by one having no authority to act as agent, it is obligatory on his principal, or the party for whom he acts, if such party, within a reasonable time after he is fully informed of what has been done, does not object thereto, he is presumed to ratify the acts and is bound thereby. If Downey received the certificate conditioned that he would receive the money in discharge of the debt, if the bank would pay it, then Downey was bound to use reasonable diligence to collect the money due on the certificate. Reasonable diligence consists in such exertions as a prudent man would use in his own case in the collection of the certificate. And if Mr. Downey failed to use such diligence to collect the money, the defendants are not liable, and the jury should find for the defendant.

In regard to the small note, Hicks and Arnold were to pay in such funds as they received from the railroad company; this would not discharge them from the payment of the note, unless the jury believe from the note itself that they were not to pay the note unless they collected their debt of [the] railroad company. The fact that this note is payable in such funds as Hicks & Arnold should receive from the railroad company, does not show that the note was not to be paid unless Hicks & Arnold should collect their debt of the railroad company.

If the jury believe that the certificate of deposite was received by Hicks, as agent of Downey, in payment of the indebtedness of Hicks & Arnold to Downey, and afterwards the act of Hicks, the agent, was ratified by Downey, after he was informed of all the facts, the indebtedness was thereby discharged, and the jury should find for the defendant; otherwise for plaintiff. An account stated, if delivered to the party to be charged, and acquiesced in by him or not dissented to, is evidence of his assent thereto.

To the refusing of said instructions as asked by the plaintiff, and the giving of the instructions aforesaid, the plaintiff then and there, and before the jury retired from the bar, excepted, and prayed this to be signed, sealed, enrolled, and made part of the record as his bill of exceptions; which is done accordingly.

Witness the hand and seal of the judge.

S. J. GHOLSON. [SEAL.]

Therefore, it is considered by the court, that Samuel S. Downey, the plaintiff, take nothing by his said bill, but for his false clamor be in mercy, &c.; and that the said defendant go thereof hence without day, and recover of the said plaintiff her costs and charges by her about her defence in this behalf expended.

(*Copy of writ of error bond.*)

UNITED STATES OF AMERICA,
Southern district of Mississippi, sct.

Know all men by these presents, that we, Samuel S. Downey and Armstead Burwell are held and firmly bound unto Mary M. Hicks, executrix of Joseph T. Hicks, deceased, in the just and full sum of one thousand dollars, lawful money of the United States, to be paid to the said Mary M. Hicks, executrix of Joseph T. Hicks, deceased, her lawful attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 28th day of May, A. D. one thousand eight hundred and fifty.

The condition of this obligation is such, that whereas, at a term of the circuit court of the United States, for the southern district of Mississippi, commenced and held at the city of Jackson, on the first Monday of May, A. D. 1850, judgment was rendered by said court in favor of the said Mary M. Hicks, executrix as aforesaid, against the said Samuel S. Downey for the costs of suit; and the said Samuel S. Downey hath sued out a writ of error from the Supreme Court of the United States to reverse said judgment.

Now, if the said Samuel S. Downey shall prosecute his said writ of error to effect, and shall well and truly pay and satisfy the amount of said judgment, and all such damages, interest, and costs, as the said Supreme Court of the United States shall adjudge in the premises, if he, the said Samuel S. Downey, shall fail to make his plea good, then and in that case this obligation to be void, otherwise to remain in full force and virtue.

SAMUEL S. DOWNEY, [SEAL.]
Per A. BURWELL, *attorney in fact.*
A. BURWELL. [SEAL.]

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Circuit court, United States.

I, William H. Brown, clerk of said circuit court, do hereby certify, that the foregoing two hundred and ten pages contain a full, true, and complete transcript of the record of the judgment in the case therein named, as the same now remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Jackson, this 19th day of November, [L. S.] A. D. 1850, and in the 75th year of the independence of the United States of America.

W. H. BROWN, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judges of the circuit court of the United States, for the southern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court, before you, or some of you, between Samuel S. Downey and Mary M. Hicks, executrix, &c., of Joseph T. Hicks, deceased, a manifest error hath happened, to the great damage of the said Samuel S. Downey, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of December, in the year [L. S.] of our Lord one thousand eight hundred and forty-nine, and of the independence of the United States the 74th.

Issued the 28th day of May, A. D. 1850.

W. H. BROWN,
Clerk circuit court of U. S., southern district of Mississippi.

UNITED STATES OF AMERICA, *ss:*

To Mary M. Hicks, executrix of Joseph T. Hicks, deceased, greeting:

You are hereby cited and admonished to be and appear at a Su-

preme Court of the United States, to be held at Washington, on the first Monday in December next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States, for the ninth circuit and southern district of Mississippi, wherein Samuel S. Downey is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel J. Gholson, one of the judges of the circuit court of the United States, for the southern district of Mississippi, this 28th day of May, in the year of our Lord one thousand eight hundred and fifty, and in the 74th year of the independence of the United States.

S. J. GHOLSON.

Executed on George S. Yerger, attorney of Mary M. Hicks, administratrix of Joseph T. Hicks, deceased, September 13th, 1850.

F. DAVIS, *Marshal.*
Per R. FLETCHER,
Deputy marshal.

Mileage - - - - - - - -	$5 00
Service - - - - - - - -	2 00
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